150 U.S. 476

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RECORD, CASE No. 14,025.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 98

JOSEPH LEES AND JOHN S. LEES, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED MAY 3, 1890.

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1 UNITED STATES, } *ss:*
Eastern District of Pennsylvania, }

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Joseph Lees and John S. Lees, plaintiffs in error, and The United States of America, defendants in error, in a plea of —, a manifest error has intervened, to the great damage of the said Joseph Lees and John S. Lees, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 18th day of April, A. D. one thousand eight hundred and ninety, and in the one hundred and fourteenth year of the Independence of the said United States.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Joseph Lees and John S. Lees — plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff- in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 19th day of April, in the year of our Lord one thousand eight hundred and ninety.

W. McKENNAN,
Cir. Judge.

I accept service of this citation.

JOHN R. READ,
U. S. Att'y.

3 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JOSEPH LEES and JOHN LEES, Surviving Partners of James Lees, Deceased, Now or Late Trading as James Lees and Sons, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.

No. 1. October Session, 1889.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1889, No. 1.

It is thus contained:

4 Be it remembered that on the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty-nine, upon præcipe filed by Hector T. Fenton, Esq., attorney for Joseph Lees and John S. Lees, surviving partners of James Lees, deceased, now or late trading as James Lees and Sons, a writ of error to the district court of the United States, E. D. of Pa., issued, which, with the return thereto, is in the words and figures following, to wit:

5 THE UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

The President of the United States to the judge of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Because that in the record and process, and also in the rendering of the judgment in a suit before you, between the United States of America, plaintiff, and Joseph Lees and John S. Lees, surviving partners of James Lees, deceased, trading as James Lees & Sons, defendants in a plea of assumpsit, a manifest error has intervened, to the great damage of the said Joseph Lees and John S. Lees, surviving partners, &c., as in its complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf—

You are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable, the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, sitting at Philadelphia on the first Monday of October next (1889), that the record and process aforesaid being inspected, they may cause to be done what of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, at Philadelphia, this fifteenth day of May, A. D. 1889, and in the one hundred and thirteenth year of the Independence of the said United States.

[SEAL.] SAMUEL BELL,
Clerk Circuit Court U. S.

(Endorsed:) No. 1. October sess., 1889. Circuit court U. States, east dist. of Pa. Joseph Lees *et al.*, plaintiffs in error, *vs.* The United States of America, defendant in error. , Writ of error. Brought into the clerk's office dist. court U. States, east. dist. of Penna., May 15, 1889. W. W. Craig, pro clerk

THE UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss.*:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, to be holden at Philadelphia on the first Monday of October next (1889), pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein Joseph Lees and John S. Lees, surviving partners of James Lees, deceased, trading as James Lees & Sons, are plaintiffs in error, and you are defendant in
6 error, to show cause, if any there be, why the judgment in the said writ of error mentioned shall not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand this seventeenth day of May, A. D. 1889.

WM. BUTLER, *Judge.*

(Endorsed:) No. 1. Oct. sess., 1889. Circuit court U. States, east. dist. of Penna. Joseph Lees and John Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons, plaintiffs in error, *vs.* The United States of America, defendant in error. Citation on writ of error, and acceptance of service by the defendant. Brought into clerk's office of district court May 18, 1889. Chas. S. Lincoln, clerk district court.

Service accepted for United States, defendant in error, May 17, 1889.

JOHN R. READ,
U. S. Attorney.

7 In the District Court of the United States for the Eastern District of Pennsylvania, of August Session, 1888, No. 9.

Pleas before the honorable the judge of said court.

It is thus contained:

THE UNITED STATES OF AMERICA *vs.* JOSEPH LEES and JOHN S. LEES, Surviving Partners of James Lees, Deceased, Now or Late Trading as James Lees & Sons.	Summons Assumpsit.

Be it remembered that on the twenty-second day of August, A. D. 1888, upon præcipe filed by John R. Read, Esq., attorney of the United States for the eastern district of Pennsylvania, a writ of summons assumpsit issued, which, with the return of the marshal thereto, is in the words and figures following, to wit:

UNITED STATES, *Eastern District of Pennsylvania*, } *ss:*

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you that you summon Joseph Lees and John Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons, late of your district, if they may be found therein, so that they be and appear before the judge of the district court of the United States for the eastern district of Pennsylvania, at a session of the same court to be holden at Philadelphia, on the first Monday of September next, to answer to the United States of America, of a plea of assumpsit. And have you then there this writ.

Witness the Honorable William Butler, judge of said court, at Philadelphia, this twenty-second day of August, A. D. 1888, and in the one hundred and thirteenth year of the Independence of the United States.

W. W. CRAIG,
Pro Clerk of District Court.

True copy.

ABRAM B. MYERS,
Deputy U. S. Marshal.

(Endorsed:) No. 9. August sessions, 1888. U. S. district court. The United States *vs.* Joseph Lees and John Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons. Summons assumpsit. Returnable on the first Monday of September next. John R. Read, Esq., attorney for plaintiff.

(*Marshal's Return to Above Writ.*)

8 Aug. 23, 1888, at Bridgeport, in my district, served the within writ on the within-named Joseph Lees and John Lees,

by giving each of them a true and attested copy thereof, and making known the contents of the same.

So answers—

A. H. DILL, *U. S. Marshal*,
Per ABRAHAM B. MYERS, *Deputy*.

And afterwards, to wit: on the twenty-fourth day of August, A. D. 1888, John R. Read, Esq., attorney as aforesaid, declares against the said "Joseph Lees and John Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons," in the plea aforesaid, in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES	U. S. D. C.,
vs.	Aug. Sess., 1888.
JOSEPH LEES and JOHN LEES, Trading, etc.	No. 9.

Statement of Plaintiff's Demand.

The above suit is brought to recover from the defendants the sum of one thousand dollars ($1,000), with interest and costs, being the forfeit and penalty for the violation by them of the provision of the act of Congress of February 26, 1885, chap. 104, entitled "An act to prohibit the importation and migration of foreigners and aliens under contract and agreement to perform labor in the United States, its territories, and the District of Columbia" (23 Stat., 332), and its supplement, act of February 23, 1887, chap. 220 (24 Stat., 414).

First. The above plaintiff avers that the above defendants, being a copartnership, having their place of business at Bridgeport, Montgomery county, Pennsylvania, did, to wit, upon the seventh day of May, in the year one thousand eight hundred and eighty-six, prepay the transportation and assist and encourage the importation and migration of a certain alien and foreigner and subject of the Kingdom of Great Britain, to wit, Frederick William Graham, residing at Spa Green, Lepton, near Huddersfield, in the county of York, England, into the United States, to wit, into the port of New York, under a special and express contract and agreement, made, to wit, upon the seventh day of May, in the year one thousand eight hundred and eighty-six, previous to the importation and migration of the said alien and foreigner, to perform labor and service, to wit, as a dyer, in the trade or business of woolen cloth manufacturing, carried on by the said defendants in the United States, to wit, at the place of business of the said defendants at Bridgeport, Montgomery county, Pennsylvania, as aforesaid.

Second. And the above plaintiff further avers that the above defendants, engaged in the business of woolen cloth manufacturing and having their place of business at Bridgeport, Montgomery county, Pennsylvania, as aforesaid, did knowingly assist, en-
9 courage, and solicit the importation and migration of a certain alien and foreigner, to wit, Frederick William Gra-

ham, into the United States, to wit, into the port of New York, and thence to the said Bridgeport, Pennsylvania, to perform labor and service, to wit, the service of a dyer at the said place of business, and under a certain express and special contract and agreement made and entered into, to wit, upon the seventh day of May, in the year one thousand eight hundred and eighty-six, between the said defendants and the said Frederick William Graham, a resident of Spa Green, Lepton, near Huddersfield, in the county of York, England, and a subject of the Kingdom of Great Britain, being the said certain alien and foreigner, as aforesaid: The said labor and service of dyeing to be performed by the said Frederick William Graham, for the said defendants at their place of business, as aforesaid, previous to the said Graham's becoming a resident or citizen of the United States.

Third. And the said plaintiff further avers that the special contract and agreement between the said defendants and the said Frederick William Graham referred to in the two preceding paragraphs, respectively, of this statement of complaint is as follows, to wit:

Copy of Agreement.

An agreement made the seventh day of May, one thousand eight hundred and eighty-six, between James Lees and Sons, of Bridgeport, Connecticut, in the United States of America, woolen cloth manufacturers, of the one part, and Frederick William Graham, of Spa Green, Lepton, near Huddersfield, in the county of York, dyer, of the other part, whereby it is mutually agreed by and between the said parties hereto as follows, that is to say:

1. The said James Lees and Sons shall employ the said Frederick William Graham, and the said Frederick William Graham shall proceed to Bridgeport, and shall serve the said James Lees and Sons in their trade or business of woolen cloth manufacturers, as dyer, for the term of twelve months from the date of his sailing from Liverpool to New York, provided always that if either of the said parties hereto shall be desirous of terminating and cancelling this agreement, it shall be lawful for them or him so to do at the end of the first six months of the said term, by giving to the other party a written notice to that effect, and in that event the said James Lees and Sons will, in addition to his wage, provide the said Frederick William Graham with a second-cabin passage back to Liverpool from New York.

2. The said James Lees and Sons shall pay to the said Frederick William Graham the sum of four pounds per week, as and by way of salary during the said term, by weekly payments.

3. The said salary shall commence on the day the said Frederick William Graham sails from Liverpool to New York.

4. The said James Lees and Sons shall and will provide the said Frederick William Graham with a second-cabin passage from Liverpool to New York.

5. The said Frederick William Graham shall, for the consideration aforesaid, devote the whole of his time to faithfully and dili-

gently serving the said James Lees and Sons in their trade
10 or business of woolen cloth manufacturers, as dyer, to the best of his skill and ability, and shall obey and fulfill all the lawful and proper commands of the said James Lees and Sons in and about the discharge of such duties.

As witness the hands of the said parties hereto.

For James Lees and Sons,
F. H. JOHNSON.

7th May, 1886.

(Stamp)
F. W. GRAHAM.

7th May, 1886.

Witness to signatures of F. H. Johnson and F. W. Graham,
D. HALLAS,
Sea Green, Morefield.

And the said plaintiff finally avers that the twenty-third word in the said recited agreement, to wit, the word Connecticut, is an error and scrivener's mistake for the word Pennsylvania.

(Signed) JOHN R. READ,
U. S. Attorney.

Aug. 21, 1888.

And afterwards, to wit, on the eighth day of September, A. D. 1888, the said defendants, Joseph Lees and John S. Lees, make reply by affidavit to the said declaration or statement of plaintiff's demand, and the same being filed is in the words and figures following, to wit:

In the District Court of the United States in and for the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA *vs.* JOSEPH LEES and JOHN LEES, Surviving Partners, etc.	August Session, 1888. No. 9.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *sct:*

Joseph Lees and John S. Lees, surviving partners of James Lees, deceased, late trading as James Lees & Sons, defendants in the above-entitled action, being duly severally affirmed, depose and say: That they have a just and true defence to the whole of the plaintiff's claim in said action, of the following nature and character:

That they are advised that the writ and proceedings in said action are defective and insufficient to give this court jurisdiction of the subject-matter therein set forth, or of the parties thereto, for the reason that neither said writ or proceedings, nor the record thereof, aver and set forth that the alleged act or acts complained of was or were committed in the eastern district of Pennsylvania, nor is it set

forth therein that at the time of the institution of said suit the defendants, or either of them, were residents of the eastern district of Pennsylvania.

11 That deponents are advised that the statement of claim filed is defective and insufficient to require any answer thereto on the merits of the action, because it does not aver or set forth that the alien, therein named, emigrated to the United States, or that he ever performed any labor or service in the United States for said defendants or for others, either in pursuance of said contract or otherwise; and also, because it does nor aver and set forth that the said alien, and the purpose of his employment therein particularly set forth, are not within the proviso of the fifth section of said act of Congress, of February 26, 1885, therein recited, exempting from its operation skilled workmen in any new industry not then established in the United States, and for which purpose skilled labor could not otherwise be had; and also, because the truth of the matters of fact therein set forth are not verified by the oath or affirmation of any one, or by or on behalf of the plaintiff.

That deponents are advised that this court has no jurisdiction of the subject-matter of this action, for the reason that exclusive jurisdiction thereof is vested in the circuit court of the United States by the express terms of the act of Congress on which this action is founded, and by the general laws in force at the time of the institution thereof.

That deponents are advised that said statement is defective, irregular, and insufficient, because it sets forth that this action is founded *inter alia* on an act of Congress of February 23, 1887, recited therein, and does not aver or set forth that the defendants, or either of them, have done or committed any act or thing therein prohibited, or failed to do any act or thing thereby enjoined which they or either of them were required by law to do; or allege any violation of said act of Congress by them or either of them.

That deponents are advised that the act of Congress of February 26, 1885, in said statement recited, in so far as it respects any act or thing alleged to have been done or committed by them, or either of them, or by or for them or either of them, is in contravention of the Constitution of the United States, and void as not within the power of Congress to make or ordain, for the reasons among others, that the power of Congress to make laws for the regulation of commerce with foreign nations does not extend to interference with the lawful private affairs of an alien or immigrant, or to his otherwise lawful or peaceable occupation or employment after he shall have become a resident of the United States, or with his otherwise lawful or peaceable object or intention in immigrating to the United States, or with any otherwise lawful inducement held out to him to become a resident of the United States.

That deponents are advised that said last-mentioned act of Congress, in the respects mentioned, is in contravention of the Constitution of the United States and of the amendments thereto, and void as not within the power of Congress to make or ordain, for the reasons among others, that it does not extend to all persons in the same

class equal protection of the laws, and discriminates between persons in the same class; and for the further reason that it enables an alien to sue in his own name and to his own use for a fine, penalty, or forfeiture for an act of a citizen of the United States, which act in no manner tends to the injury or damage of said alien.

12 That deponents are advised that said last-mentioned act of Congress, in the respects mentioned, is in contravention of the Constitution of the United States and of the amendments thereto, and void as not within the power of Congress to make or ordain, because it is not within the powers delegated to the United States Government by the Constitution to pass any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States in any foreign country which would not be unlawful if done or made within the jurisdiction of the United States or of any of the States thereof.

That deponents are advised that the act of Congress of February 26, 1885, in said statement recited, in so far as it prohibits any subject of the Kingdom of Great Britain, not a convict or pauper, from coming to the United States either temporarily or permanently, on any otherwise lawful business, occupation, or employment, whether in pursuance of a previous contract made with him in respect to such business, occupation, or employment or otherwise, was and is in contravention of then and now existing treaties between the United States of America and said Kingdom of Great Britain.

And deponents deny that they or either of them have done or committed any act or thing in violation of the acts of Congress or either of them in said statement mentioned and recited; and they further say that the occupation, labor, or employment mentioned in the contract annexed to said statement, required thereby to be performed by said alien, was as skilled laborer in the manufacture of fine cheviot cloths, which was an industry then commonly practiced in Great Britain, but not then established or practiced in the United States, and for which skilled labor could not then be otherwise obtained, and being so, was and is within the provis-on or saving clause of the fifth section of said act of Congress of February 26, 1885, in said statement recited, and not within the things prohibited by the first, second, and third sections thereof.

And these deponents further say, that they are advised and believe that the foregoing defences in matters of law are well taken, and that as respects the matters of fact hereinabove set forth, they expect to be able to maintain and prove the same on the trial of this cause.

JOSEPH LEES.
JOHN S. LEES.

Affirmed and subscribed before me this sixth day of September, 1888.

[SEAL.] ABRM. D. HALLMAN, *J. P.*

And afterwards, to wit, on the nineteenth day of November, A. D. 1888, the said defendants, Joseph Lees and John S. Lees, by Hector

T. Fenton, Esq., their attorney, demur to the declaration or statement of plaintiff's demand aforesaid, and the said demurrer being filed, is in the words and figures following, to wit:

13 In the District Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES
vs.
JOSEPH LEES and JOHN LEES, Trading, etc.
August Session, 1888.
No. 9.

These defendants, by protestation, not confessing any of the matters of fact in manner and form as the same are set forth and contained in the plaintiff's statement or declaration filed, demur thereto, and for cause of demurrer say:

First. Because it does not appear from the matters averred therein that this court has jurisdiction either of the subject-matter or of the parties defendants, it not being alleged therein that the act or acts complained of was or were committed within the eastern district of Pennsylvania, nor that at the institution of this suit the defendants or either of them were residents of the eastern district of Pennsylvania.

Second. Because it does not aver or set forth that the alien therein named emigrated to the United States, or that he ever performed any labor or service in the United States for said defendants or for others, either in pursuance of the alleged contract therein mentioned or otherwise.

Third. Because it does not aver and set forth that the said alien and the purpose of his employment therein particularly mentioned, was not within the proviso of the fifth section of the act of Congress of February 26, 1885, therein recited, exempting from its operation skilled workmen in any new industry not then established in the United States, and for which skilled labor could not otherwise be had.

Fourth. Because it appears thereby, and by the act of Congress therein recited, that this court has no jurisdiction of the subject-matter of the action, for the reason that exclusive jurisdiction thereof is vested in the circuit court of the United States by the express terms of the act of Congress on which this action is founded, and by the general laws in force at the time of the institution thereof.

Fifth. Because it avers that this action is founded, *inter alia*, on an act of Congress of February 23, 1887, recited therein, but does not allege any violation of said act of Congress by the defendants or either of them.

Sixth. Because the act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing therein alleged to have been done or committed by or for the defendants, or either of them, is in contravention of the Constitution of the United States, and void as not within the power of Congress to make or ordain, for the reason, among others, that the power of Congress to make laws for the regulation of commerce with the foreign nations does not

extend to interference with the lawful private affairs of an alien or immigrant, or to his otherwise lawful or peaceable occupation or employment after he shall have become a resident of the United States, or with his otherwise lawful or peaceable object or intention in emigrating to the United States, or with any otherwise lawful inducement held out to him to become a resident of the United States.

14 Seventh. Because the act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing alleged to have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States and of the amendments thereto, and void as not within the powers of Congress to make or ordain for the reason, among others, that it does not extend to all persons in the same class equal protection of the laws.

Eighth. Because the act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing alleged to have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States and of the amendments thereto, and void as not within the power of Congress to make or ordain for the reason, among others, that it discriminates between persons in the same class.

Ninth. Because the act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing alleged to have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States and of the amendments thereto, and void as not within the powers of Congress to make or ordain, for the reason, among others, that it attempts to exercise police power, which belongs to the States exclusively.

Tenth. Because the act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing alleged to have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States and of the amendments thereto, and void as not within the power of Congress to make or ordain, for the reason, among others, that it enables an alien to sue to his own use for a fine, penalty, or forfeiture for an act of a citizen of the United States, which act in no manner tends to the injury or damage of said alien.

Eleventh. Because the said act of Congress of February 26, 1885, therein recited, in so far as it respects an act or thing alleged to have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States, and void as not within the power of Congress to make or ordain, because it is not within the powers delegated by the States to the Federal Government to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States in any foreign country, which would not be unlawful if done or made within the jurisdiction of the United States or any of the States thereof.

Twelfth. Because the said act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing alleged to

have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States, and void as not within the power of Congress to make or ordain, because it is not within the power delegated by the States to the Federal Government to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States with a citizen or subject of any foreign country, which would not be unlawful if done or made with any citizen of the United States.

15 Thirteenth. Because the said act of Congress of February 26, 1885, therein recited, in so far as it respects any act or thing alleged to have been done or committed by or for these defendants, or either of them, is in contravention of the Constitution of the United States, and void in so far as it prohibits any subject of the Kingdom of Great Britain, not a convict or pauper, from coming to the United States, either temporarily or permanently, in any otherwise lawful business, occupation, or employment, whether in pursuance of a previous contract made with him in respect to such business, occupation, or employment or otherwise, because the same was and is in contravention of then and now existing treaties between the United States of America and said Kingdom of Great Britain.

H. T. FENTON,
Attorney for Defendants.

19th November, 1888.

And afterwards, to wit, on the eighteenth day of January, A. D. 1889, the cause having been heard upon the demurrer of the said defendants to the declaration or statement of plaintiff's demand aforesaid, for that it seems to the court here that the said statement of plaintiff's demand, or declaration of the said United States before set forth, and the matters therein contained, are sufficient in law to have and maintain the action of the aforesaid United States against the aforesaid defendants.

Therefore it is considered by the court here that said defendants do have leave to plead if so advised.

And afterwards, to wit, on the nineteenth day of January, A. D. 1889, comes John R. Read, Esq., attorney as aforesaid, and prays leave to amend his statement of plaintiff's demand aforesaid, and the amendment being allowed and filed, is in words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania.

UNITED STATES *vs.* JOSEPH LEES and JOHN LEES, Trading, &c.	U. S. D. C., Aug. Sess., 1888. No. 9.

Amended Statement of Plaintiff's Demand.

And now, to wit, January 19, 1889, on motion of plaintiff's attorney, the court grant leave to withdraw the "statement of plaintiff's demand" filed and to file in lieu thereof an amended "statement of plaintiff's demand," as follows, to wit:

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The above suit is brought to recover from the defendants the sum of one thousand dollars ($1,000), with interest and costs, being the forfeit and penalty for the violation by them of the provisions of the act of Congress of February 26, 1885, chap. 104, entitled "An
16 act to prohibit the importation and migration of foreigners and aliens under contract and agreement to perform labor in the United States, its Territories, and the District of Columbia." (23 Stat., 332.)

First. The above plaintiff avers that the above defendants, being a partnership, having their place of business within the district aforesaid, to wit, at Bridgeport, Montgomery county, Pennsylvania, did, to wit, upon the seventh day — May, in the year one thousand eight hundred and eighty-six, prepay, to wit, in this, the district aforesaid, the transportation, and did assist and encourage, to wit, within the district aforesaid, the importation and migration of a certain alien and foreigner, and subject of the Kingdom of Great Britain, to wit, Frederick William Graham, residing at Spa Green, Lepton, near Huddersfield, in the county of York, England, into the United States, to wit, into the port of New York, under a special and express contract and agreement, made, to wit, upon the seventh day of May, in the year one thousand eight hundred and eighty-six, previous to the importation and migration of the said alien and foreigner, to perform labor and service, to wit, as a dyer in the trade or business of woolen cloth manufacturing, carried on by the said defendants in the United States, within the said district, to wit, at the place of business of the said defendants at Bridgeport, Montgomery county, Pennsylvania, as aforesaid, contrary to the provisions of the act of Congress of February 26, 1885, aforesaid.

Second. And the above plaintiff further avers that the above defendants, engaged in the business of woolen cloth manufacturing, and having their place of business within the said district, to wit, at Bridgeport, Montgomery county, Pennsylvania, as aforesaid, did, to wit, within the said district, knowingly assist, encourage, and solicit the importation and migration of a certain alien and foreigner, to wit, Frederick William Graham, into the United States, to wit, into the port of New York, and thence to the said Bridgeport, Pennsylvania, to perform labor and services, to wit, the service of a dyer at

the said place of business, and under a certain express and special contract and agreement made and entered into, to wit, upon the seventh day of May, in the year one thousand eight hundred and eighty-six, between the said defendants and the said Frederick William Graham, a resident of Spa Green, Lepton, near Huddersfield, in the county of York, England, and a subject of the Kingdom of Great Britain, being the said certain alien and foreigner as aforesaid, the said labor and service of dyeing to be performed by the said Frederick William Graham for the said defendants at their place of business, as aforesaid, previous to the said Graham becoming a resident or citizen of the United States, contrary to the provisions of the act of Congress of February 26, 1885, aforesaid.

Third. And the said plaintiff further avers that the special contract and agreement between the said defendants and the said Frederick William Graham, referred to in the two preceding paragraphs, respectively, of this statement of complaint, is as follows, to wit:

Copy of Agreement.

An agreement made the seventh day of May, one thousand eight hundred and eighty-six, between James Lees & Sons, of
17 Bridgeport, Connecticut, in the United States of America, woolen cloth manufacturers, of the one part, and Frederick William Graham, of Spa Green, Lepton, near Huddersfield, in the county of York, dyer, of the other part, whereby it is mutually agreed by and between the said parties hereto, as follows, that is to say:

1. The said James Lees & Sons shall employ the said Frederick William Graham, and the said Frederick William Graham shall proceed to Bridgeport, and shall serve the said James Lees & Sons in their trade or business of woolen cloth manufacturers, as dyer, for the term of twelve months from the date of his sailing from Liverpool to New York; provided always that if either of the said parties hereto shall be desirous of terminating and canceling this agreement it shall be lawful for them or him so to do at the end of the first six months of the said term, by giving to the other party a written notice to that effect, and in that event the said James Lees & Sons will, in addition to his wage, provide the said Frederick William Graham with a second-cabin passage back to Liverpool from New York.

2. The said James Lees & Sons shall pay to the said Frederick William Graham the sum of four pounds per week, as and by way of salary, during the said term, by weekly payments.

3. The said salary shall commence on the day the said Frederick William Graham sails from Liverpool to New York.

4. The said James Lees & Sons shall and will provide the said Frederick William Graham with a second-cabin passage from Liverpool to New York.

5. The said Frederick William Graham shall, for the considerations aforesaid, devote the whole of his time to faithfully and diligently serving the said James Lees & Sons in their trade or business

of woolen cloth manufacturers, as dyer, to the best of his skill and ability, and shall obey and fulfill all the lawful and proper commands of the said James Lees & Sons in and about the discharge of such duties.

As witness the hands of the said parties hereto.

For James Lees & Sons,
F. H. JOHNSON.

7th May, 1886.

(Stamp.)
F. W. GRAHAM.

7th May, 1886.

Witness to signatures of F. H. Johnson and F. W. Graham,
D. HALLIS,
Sea Green, Moorefield.

And the said plaintiff doth aver that the twenty-third word in the said recited agreement, to wit, the word Connecticut, is an error and scrivener's mistake for the word Pennsylvania.

Fourth. And the said plaintiff doth aver that afterwards, to wit, upon the first day of July, 1886, the said alien and foreigner, to wit, the said Frederick William Graham, did, pursuant to the said
18 recited agreement and contract, migrate to the United States, and did, pursuant to the said contract and agreement, perform labor within the said district, to wit, at Bridgeport, Montgomery county, Pennsylvania, as aforesaid, contrary to the provisions of the act of Congress of February 26, 1885, aforesaid.

Fifth. And the said plaintiff doth also aver that now, to wit, at the time of the bringing of this their said suit, to wit, upon the day and year aforesaid, to wit, the first day of August, 1888, the said defendants reside and have their place of business within the said district, to wit, the said eastern district of Pennsylvania, to wit, at Bridgeport, Montgomery county, Pennsylvania, as aforesaid.

JOHN R. READ,
U. S. Attorney.

And afterwards, to wit, on the twenty-sixth day of January, A. D. 1889, the said defendants make their plea in the words following, to wit:

Defendants plead not guilty.

H. T. FENTON,
Attorney for Defendants.

And afterwards to wit, on the twentieth day of February, A. D. 1889, it is ordered that a jury come to try the issue in this case.

And thereupon on the same day come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid being called, likewise come to wit:

1. Jesse L. Gable,
2. Robert M. Haslett,
3. Henry H. Miller,
4. George Saul,
5. James Kendig,
6. Israel G. Eob,
7. Charles A. Slidel,
8. Alva Hanners,
9. Joseph Randall,
10. James Agnew,
11. Frank F. Sieberling.
12. Samuel W. Warner,

who are duly impanelled, returned, chosen, tried and sworn, or affirmed, to speak the truth in the issue joined in this cause, between The United States of America, plaintiff, and Joseph Lees and John S. Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons.

And afterwards, to wit, on the twenty-first day of February, A. D. 1889, the jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that upon the issue joined in this cause they find for the United States for the sum of one thousand dollars, with six cents costs.

And afterwards, to wit, on the twenty-fifth day of February, A. D. 1889, the said defendants, by their attorney, Hector T. Fenton, Esq., move for a new trial, and reasons in support thereof are filed in the words and figures following, to wit:

19 United States District Court.

UNITED STATES *vs.* JOSEPH LEES *et al.* } August Sess., 1888. No. 9.

And now, February 23, 1889, the defendants, by H. T. Fenton, their attorney, come into court and move for a new trial, assigning therefor the following reasons:

1. Because in the absence of proof of previous acquiescence or authorization by all the partners in the doing of the act complained of, the learned judge erred in charging the jury as follows: "The defendants are Joseph Lees and John Lees only. The language of the record in this case describing them as partners is descriptive only and is not material, and this action involves them and no one else."

2. Because the learned judge erred in admitting in evidence the written contract of April, 1886, without competent proof of authority on the part of the agent to make the same in the firm name.

3. Because the learned judge erred in overruling defendants' objection to the compulsory examination of John Lees on the part of the Government against himself and codefendant.

4. Because the learned judge erred in construing the proviso of the act of February 26, 1885, to mean that a new industry contemplated only a substantially new product, and excluded as such a more skillful process of making an improved product.

5. Because the learned judge erred in charging the jury, under the evidence submitted, that imported cheviots were, in his opinion, merely an improved product as compared with so-called cheviot cloths made in the United States in 1886, and prior to that time.

And afterwards, to wit, on the third day of May, A. D. 1889, the cause having been heard upon the motion of the defendants for a new trial, and the reasons in support thereof—

It is considered by the court here that the new trial be refused, and the reasons in support of same be dismissed.

And thereupon, on the same day, it is considered and adjudged that the plaintiff, The United States of America, do have and recover of Joseph Lees and John S. Lees, the defendants, the sum of one thousand dollars, together with their costs by them in this behalf expended.

And afterwards, to wit, on the fifteenth day of May, A. D. 1889, a bill of exceptions, tendered by the defendants, and duly signed by the honorable, the judge of the court here, together with an assignment of errors, and prayer for reversal of his judgment entered, being filed in the words and figures following, to wit:

20 In the District Court of United States in and for the Eastern District of Pennsylvania.

UNITED STATES *vs.* JOSEPH LEES and JOHN LEES, Surviving Partners of James Lees, Deceased, Now or Late Trading as James Lees & Sons.	Aug. Sess., 1888. No. 9.

Be it remembered, that in the said term of August, A. D. 1888, came the said plaintiff into the said court, and impleaded the said defendants in a certain plea of assumpsit, &c., in which the said plaintiff declared *pro ut narr.* and the said defendant pleaded *pro ut* pleas. And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the Honorable William Butler, judge of the said court, at Philadelphia, on the twentieth and twenty-first days of February, A. D. 1889, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly impanelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff called as a witness—

FREDERICK WILLIAM GRAHAM, —, having been duly sworn, was examined as follows:

By Mr. CARR:

Q. What is your business?
A. I am a dyer.
Q. Where do you live?

A. Bridgeport, Montgomery county, Pa.
Q. Where did you live in May, 1886?
A. In the county of Yorkshire, England.
Q. You were at that time a subject of Great Britain, were you?
A. Yes, sir.
Q. Have you been naturalized or not?
A. No, sir; I haven't been here long enough.
Q. When did you come to this country?
A. In May, 1886. I set sail in May, 1886, and landed in June.
Q. Under what circumstances did you come to this country?
A. I saw an advertisement in the Leeds Mercury: "Wanted, a dyer for the United States." I wrote, asking what part of the United States it was, etc. I didn't just apply for the situation right away. There was a gentlemen there, Mr. Johnson, came to me and asked me if I would like to come to America. I said I didn't mind. He said if I would I was to meet Mr. Umpleby, and name the date. I went to Mr. Umpleby.
Q. Do you say he asked you to meet this gentleman?
A. Yes, sir; I met Mr. Umpleby.

(Objected to.)

21 The WITNESS: I met Mr. Umpleby, and he asked me for testimonials.
Q. What did you do in pursuance of that after you had met Mr. Umpleby?

(Objected to.)

The COURT: Conversation between this man and Mr. Umpleby, of course, is not evidence against the defendants, unless the power and authority of Umpleby to represent the defendants is shown.

Mr. CARR to the witness: After you had had this conversation with Mr. Umpleby, what did you do?
A. It was the engagement to come.
Q. What did you do after that?
A. I settled to come.
Q. Did you meet Mr. Lees?
A. Yes, sir; I met Mr. John Lees in Bradford, England—the centre gentleman here.
Q. Where did you meet him—at what place?
A. I think it was the Victoria hotel, but I won't be sure. It was some hotel anyway.
Q. What was the conversation that you had with him?
A. I had very little with Mr. John Lees, just simply I asked him if there was another dyer, and he said yes, that is, if they got another dyer at this place. He said yes; but he said that he would not be there when I got there, and that was about all that passed between Mr. John Lees and me.
Q. That was subsequent to the conversation that you had with Mr. Umpleby?
A. Yes, sir.

Q. That is, that conversation with Mr. Lees was after you had had the conversation with Mr. Umpleby?

A. Yes, sir.

Q. Was it before or after an agreement was signed by you?

A. Well, I don't know about the signing. It was before I got the agreement.

By the COURT:

Q. No agreement had been presented to you for signature before that time?

A. No, sir.

By Mr. CARR:

Q. (Handing document to witness.) Is that your agreement and your signature, F. W. Graham?

A. Yes, sir.

Q. What did you do after that?

A. I set sail on the 29th of May.

Q. Did you see Mr. Lees between the time that you signed that agreement and the time you set sail?

A. No, sir; I only saw Mr. Lees once. That was before the agreement was signed.

Q. Who paid your passage money?

A. The tickets were given to us in Liverpool by Mr. Bowes.

Q. Who was Mr. Bowes?

22 A. I don't know.

Q. What was his business?

A. He was in the wool business.

Q. Who told you to go to Mr. Bowes?

A. Mr. Johnson.

Q. That is the person who signed this agreement for Messrs. Lees & Sons?

A. Yes, sir.

Q. Did you see Mr. Johnson at Mr. Bowes'?

A. No, sir.

Q. Did you pay for the ticket yourself?

A. No, sir.

Q. Where did you land in this country?

A. In New York.

Q. Where did you go to then?

A. I went to a hotel in Liberty street, I think.

Q. From there where did you go?

A. To Bridgeport, Pennsylvania.

Q. But what county?

A. Montgomery county, to James Lees & Sons.

Q. Did you meet Mr. Lees there?

A. No, sir; I met Mr. Umpleby.

Q. How long did you remain there?

A. About thirteen months—between twelve and thirteen months.

Q. What work did you do?

A. I dyed the raw stock wool.

Q. This agreement says here Bridgeport, Connecticut. How did you happen to go to Bridgeport, Montgomery county, Pennsylvadia, when you got to New York?

A. Mr. Bowes gave us an envelope addressed James Lees & Sons, Bridgeport, Pennsylvania.

Q. From that you knew that you were going to Bridgeport, Pennsylvania, and not to Bridgeport, Connecticut?

A. Yes, sir.

Q. Have you that envelope?

A. No, sir.

Q. What was on the envelope?

A. Messrs. James Lees & Sons, Bridgeport, Montgomery county, Pennsylvania.

Q. Was it written or printed?

A. I won't say for sure, because it wasn't handed to me. It was handed to Mr. Watson.

Q. What is the business of Johnson, who signs here for James Lees & Sons?

A. He seeks orders in the oil business for Price's patent oils.

Q. What else does he do?

A. That's all I know of.

Q. What wages did you get from James Lees & Sons?

A. They amounted to about $19.20 for sixty hours—four pounds in English money.

23 Q. For how long did you get that?

A. For the whole time that I was there.

(Cross-examination waived.)

FENWICK UMPLEBY, having been duly sworn, was examined as follows:

By Mr. CARR:

Q. Where were you in May, 1886?

A. In Batly, Yorkshire, England.

Q. Did you meet Mr. Lees or any of the Messrs. Lees in that place in the spring of that year?

A. Yes, sir; Mr. Lees was at my house one night when I left work—Mr. John Lees—the gentleman here came to my house. It was about the 6th or 7th of April, 1886.

Q. What conversation did you have with him?

A. He came there with Mr. Johnson. I always called him Fred. Johnson. He always went by the name of Fred. I was introduced to Mr. Lees, and he asked me if I wanted to come to America. I said yes. He asked me what business I was in—what I could do. I told him I was employed with Robert Bailey's Sons, of Batly, in the fancy wool business and Venetian trade. He asked me what I could do, and I told him what I thought I could do, and it turned out in conversation about the machinery that he had in Bridgeport, and everything went on—I couldn't tell you exactly the conversation through; but it turned out that he said that he would meet me again. He went away with Mr. Johnson and there was nothing

particular said that night, only just a short interview. He said that he would see me again.

Q. Was there anything said about Mr. Johnson engaging you or not?

A. Oh, no; Mr. Johnson had nothing to do with engaging me.

Q. Or the engaging of any one else?

A. Not at that time.

By the COURT:

Q. What next occurred between you and Mr. Lees?

A. It was either Tuesday or Wednesday evening. I couldn't say which—on Friday afternoon of the same week, I think the 9th of April, Johnson came to me and says, "I want you to go down to Liverpool to-morrow, Saturday." I said, "I don't think I can get away to-morrow, because my master is going to Liverpool to-morrow." I went to Liverpool on Saturday, the 10th of April.

By Mr. CARR:

Q. In pursuance of what Mr. Johnson had said?

A. Yes, sir. When I got to Liverpool I went down to Bowes, the wool broker's rooms. When I got there I met Mr. John Lees, and we had some conversation, and we went into the wool-room to examine some wools, price and cost, shrinkage and so on. By and by I was called again into a private room, and Mr. Lees asked me if I had made up my mind to go to America. I said yes, I had, on condition that I could get what I wanted. He says, "Come in here and we will conclude this." We went in, and the agreement was made up. I signed it that day, and went back to Batly. That was on the 10th of April, 1886.

By the COURT:

Q. Was the agreement in writing?

24 A. Yes, sir.

By Mr. CARR:

Q. Who was Mr. Bowes?

A. A wool broker in Liverpool, of a firm there.

Q. Did you have any other conversation with Mr. Lees about the importation of Frederick William Graham?

A. Not at that time.

Q. When was it?

A. I met Mr. Lees in the Victoria hotel, Bradford, after we had engaged these men—after we had got them together.

Q. That is, Graham and the other men that came with him?

A. Yes, sir. There were several men.

Q. Then what occurred?

A. We showed him that the men were there, and that we considered were capable of managing what we had engaged them for.

By the COURT:

Q. You and who engaged these men?
A. I and Mr. Johnson.

By Mr. CARR:

Q. Then you say Mr. Johnson showed Mr. Lees these men?
A. We met there by appointment.

By Mr. READ:

Q. You and Mr. Johnson—and Mr. Graham was among the number?
A. Yes, sir.
Q. When did you next see Mr. Lees?
A. When I sailed for America.
Q. Did you come over in the same ship with Mr. Lees?
A. Yes, sir.

By the COURT:

Q. What did Mr. Lees say when you pointed out to him that you had engaged these men?
A. He was satisfied with what we had done.
Q. What did he say?
A. I can't remember what he did say. I wouldn't like to say that.
Q. Can you give the purport or the substance of it?
A. He said that he had confidence in what Mr. Johnson and I had done, and he left it with us.

By Mr. CARR:

Q. Then you came with Mr. Lees in the same ship to this country?
A. Yes, sir; I came along with him.
Q. Where did you go after you landed in New York?
A. To Bridgeport, Pennsylvania.
Q. He had employed you to go there and work at his place?
A. Yes, sir, certainly.
Q. When did these men come—Graham?
A. It was the first Thursday, I think, in June. I wouldn't be certain. It was about Wednesday or Thursday when they commenced work. They landed on the Monday previous to that.
Q. Did you see or know of any arrangement with Mr. Lees or Mr. Bowes to prepay the passage money of Graham?
25 A. No, sir.
Q. Did you know F. H. Johnson?
A. Yes, sir.
Q. How long had you known him?
A. Many years. I went to school with him.
Q. What was his business?
A. General agent—foreign agent—employment agent—and he was agent for Price's patent oils.

Q. What do you mean by "foreign agent?" Do you mean to get people to come to this country?

A. Yes, sir.

Q. You remained with Lees & Sons as manager for how long?

A. I was there for two years.

Q. What was their business?

A. Worsted yarn spinners and fancy woolen manufacturers.

Q. Where is their place of business?

A. The Minerva mills, Bridgeport, Montgomery county, Pennsylvania.

Q. Had they, in 1886, a place of business in Bridgeport, Connecticut?

A. No, sir.

Q. Did you know, or not, as to the agreement made with these men, stating that James Lees & Sons were at Bridgeport, Connecticut?

A. After I got my agreement I saw there was "Connecticut" on it, but that was a mistake.

Q. How did you know it was a mistake?

A. Because I knew it was in Pennsylvania at the beginning, when we were talking about it, and after I saw the agreement I saw the word "Connecticut," and I drew his attention to it; and he said, "That's only a slip of the pen. That doesn't matter."

Q. You called Mr. Lees' attention to it?

A. No, sir, I did not. I called Mr. Johnson's attention to it. He said, "That doesn't matter."

Q. At the meeting in the Victoria hotel that you speak of, between Johnson and Mr. Lees and these seven men, was there anything said as to the payment of the passage money?

A. No, sir; not before me there wasn't.

Q. Do you know whether or not Bowes & Sons in Liverpool are the agents, or have any business connection with Lees & Sons?

A. Only through the wool business. That's all I know of—through the general buying and selling of wool.

Q. What was their business?

A. Wool brokers.

Q. They are the wool brokers of Lees & Sons?

A. Yes, sir. Lees buy their wool from them.

Q. Were they at that time, in May, 1886?

A. Yes, sir.

Q. What work did Graham do when you were with Messrs. Lees & Sons?

A. He was a dyer.

Q. Do you know what he had been engaged to do in England?

A. Yes, sir. We made inquiries of every man before we engaged him.

26 Q. That is, you and Johnson?

A. Yes, sir.

Q. What was he engaged to do?

A. He was engaged as dyer.

Q. Did he come here as a dyer?

A. Yes, sir.
Q. Did he work here as dyer?
A. Yes, sir.
Q. When did he begin to work?
A. It was either Wednesday or Thursday, the first week of June.
Q. Just as soon as he got to the mill he began to work?
A. Yes, sir.
Q. How long had you been there before Graham came to the mill?
A. We landed on the 15th of May, and I commenced work on the Monday after I landed.
Q. Was there any one dyeing then at the mills?
A. Yes, sir.
Q. What became of him?
A. He stopped there till Graham came.
Q. Then he was discharged, and Graham took his place?
A. Yes, sir.
Q. During that time that you were there at Mr. Lees' place did you have any conversation with Mr. Lees as to the coming of Graham? I mean, before Graham came to this country, did you or not have any conversation with Mr. Lees?
A. No, sir.
Q. You didn't see him?
A. No, sir.
Q. Was Mr. Lees at the mills at the time Graham came?
A. I wouldn't swear that.
Q. Who discharged the former dyer?
A. Joe Wade.
Q. Who was he?
A. The former manager.

By Mr. READ:

Q. I understood you to say John Lees came over in the same steamer with you?
A. Yes, sir.
Q. Then you were followed by Graham and the other men who came over under this engagement?
A. Yes, sir.
Q. And they went to work at the mill at Bridgeport, Pennsylvania?
A. Yes, sir.

Cross-examination.

By Mr. FENTON:

Q. Bowes was a wool broker for persons generally?
A. Yes, sir.
Q. He has other customers than Lees & Sons?
A. Yes, sir.
Q. Was Graham an expert in dyeing any particular kind of yarn?

27 A. Not to my knowledge, not an expert.

By Mr. READ:

Q. Did you receive any letters from Mr. Lees in relation to the employment that you made in England?
A. Yes, sir.
Q. Have you the letter here?
A. Yes, sir.

Mr. Read called on the witness to produce the letter.
(Letter produced.)

Q. From whom did you receive this letter?
A. I received it through the post.
Q. Do you know Mr. John Lees' handwriting?
A. Yes, sir.
Q. Is that his handwriting?
A. Yes, sir.

Mr. Read offered in evidence contract proven by Mr. Graham, and signed for James Lees & Sons by F. H. Johnson, dated May 7, 1886.
(Objected to.)

The COURT: It is not worth while to put your case upon fine points.

This is in the nature of a criminal prosecution, and unless you make it out fully I will take it from the jury, and I am not at all persuaded at present that you have made out an agency in Johnson that authorizes him to enter into a contract in violation of law. Johnson had authority to do something, there is no doubt, but whether he had authority to do the particular thing that he undertook, which was in violation of law, is a different question. I am simply considering the question now whether there is plain, explicit evidence of such authority in Johnson to bind Lees & Sons to this contract.

Mr. READ: I have a letter here written by Mr. Lees to Mr. Umpleby, which sheds some light on this question. I offer the letter in evidence. The letter is signed by Mr. Lees, and in his handwriting.

Mr. FENTON: I object to the letter because on its face it applies to Mr. Umpleby himself, and to such people whom "we shall engage," and not whom "we have engaged." It is not a ratification of anything done before.

(Objection overruled. Exception for defendant.)

Mr. Read read the letter, as follows:

"No 11 DALE STREET, LIVERPOOL,
13*th Day of April*, 1886.

Mr. Frederick Umpleby.

DEAR SIR:—I would not say anything to any one about your being under contract to go to America, and the same remarks will

apply to the people whom we shall engage to assist you. There is a law in the States against the importation of labor under contract. While it is my impression it does not apply to such skilled labor like yours, there is no use of running any unnecessary risks. There is no use of making others as wise yourself.

Yours,

JOHN S. LEES,
Care J. T. Boas and Others,
No. 11 Dale Street, Liverpool."

28 JOHN S. LEES sworn.

Mr. FENTON: John S. Lees, the witness called, is one of the defendants. This is a proceeding in the nature of a criminal proceeding. I object to his being examined on behalf of the plaintiff, because he is protected by statute.

(Objection overruled. Exception for defendant.)

By Mr. READ:

Q. You are a member of the firm of James Lees & Sons, are you not?
A. Yes, sir.
Q. Do you know Frederick William Graham?
A. Yes, sir.
Q. Do you know F. W. Johnson?
A. Yes, sir.
Q. Do you know Mr. Umpleby?
A. Yes, sir.
Q. Were you in England in the spring of 1886?
A. Yes, sir.
Q. Did you authorize Mr. Umpleby and Mr. Johnson to engage certain people for you?
A. Yes, sir.
Q. To work in your mills?
A. Yes, sir.
Q. Was F. W. Graham among that number?
A. That I do not remember.
Q. What did you authorize Mr. Johnson and Mr. Umpleby to do?
A. To employ certain men.
Q. Who were the men?
A. I know now who they are, of course; but I did not tell them to pick out certain men, because I did not know anything about them, and they were to select the men themselves.
Q. That is to say Mr. Umpleby and Mr. Johnson?
A. Yes, sir.
Q. Did you authorize them to make contracts with the men they so employed to come to this country?
A. No sir.
Q. What did you authorize them to do?
A. I did not authorize them to do anything of that sort.
Q. What did you authorize them to do?

A. I merely authorized them to employ certain men—a dyer, finisher, and so on.

Q. Upon what terms?

A. I do not remember the terms any more, because it has been three years.

By the COURT:

Q. Were they to make agreements to bind you?

A. They were to fix the wages of the men.

Q. They were to agree to the wages?

A. Yes, sir.

Q. And enter into contract with you for the men as respects the wages?

29 A. No; they were not authorized to make any contract with the men. That is, they were to agree but not to draw up a written agreement.

Q. But they were to agree upon the wages?

A. Yes, sir; that is, we would pay any wages that they agreed to pay.

Q. But you say you did not authorize them to put anything in writing?

A. No, sir.

Q. Was anything said about whether they should put it in writing or not?

A. I am not sure on that subject.

Q. But they were to agree to the terms upon which the men were to come over and work?

A. Yes, sir.

By Mr. READ:

Q. You made a written agreement yourself with Mr. Umpleby, did you not?

A. Yes, sir.

Q. Did you not authorize him to make contracts with other men?

A. Not a written contract.

Q. This is the contract you made with Mr. Umpleby, is it not? (Handing contract to witness.)

A. Yes, sir; I signed a contract with Mr. Umpleby. I remember that distinctly.

Q. And, as I understand you, Mr. Johnson was authorized to engage men for you, the terms of which they were to specify themselves?

A. Yes, sir; we agreed to pay any wages, understand, that they agreed to pay.

Q. And to ratify such employments as they would make?

A. We were to abide by what they did.

Q. Do you remember the occasion on which Mr. Umpleby brought those men to see you at the Victoria hotel?

A. Yes, sir.

Q. What he said in that particular is correct, is it not?

A. I do not think there was a misstatement.

Q. Do you remember whether the terms of the agreement were stated there at that time, as to what these men were to do, and the wages they were to have?

A. I do not remember that. It might have been stated at some subsequent time. I looked at it in this way, that these people would make the very best engagements possible for us, and therefore did not examine very closely what they might have done at the time.

By the COURT:

Q. But at the time you did ratify whatever they had done, did you?

A. Yes, sir.

Q. Then you came to this country with Mr. Umpleby, did you not?

A. Yes, sir; he came with me.

Q. And Graham and Watson and those other men that had been engaged there followed in another steamer?

A. Yes, sir.

Q. Who are Messrs. J. T. Boas & Company?

A. They buy our wool in Liverpool.

30 Q. They paid the expenses of these men to come over?

A. Well, I suppose that we paid them.

Q. You have no doubt about it, have you?

A. A trivial routine matter like that might escape my attention. For instance, he might have left that out of his account. I do not go over those accounts. Our book-keeper goes over those matters.

By the COURT:

Q. Did you understand that you were to pay their passage over?

A. Yes, sir.

Q. And did you understand that you had done it?

A. I understood that we were to pay their passage.

Q. And that you had done it?

A. I understood that we had done it.

Q. But you do not attend to the details of the business?

A. No, sir; I can explain in regard to that contract. When I saw that contract in Mr. Boas' office, in Liverpool, I noticed it was signed by Mr. Johnson. Mr. Johnson had no authority whatever from us to make such a contract.

Q. That is to put it in writing?

A. To put it in writing. I was surprised in another way, because it had apparently been drawn up by an attorney; that any attorney had drawn up a paper of that kind without asking Mr. Johnson for his power of attorney before he drew it up.

Q. When you saw it there did you object to it?

A. No.

Q. This paper was exhibited to you before the men came over?

A. Yes, sir; I won't say that those two papers were exhibited, but there was a paper which Mr. Johnson had signed. There was a paper.

Q. Was that paper the contract with this man Graham?

A. I could not say that.

Q. But it was a contract with workmen who came over?

A. Yes, sir; that had been signed similarly to that contract.

Q. You were surprised that he had signed it, but you did not object to it?

A. I did not object to it.

By Mr. READ:

Q. And the men came over in pursuance of it?

A. And the men came over.

Cross-examination.

By Mr. FENTON:

Q. The firm of James Lees & Sons have a business place at Bridgeport?

A. Yes, sir.

Q. Please state to the jury what your object was in bringing Mr. Umpleby, Mr. Graham, and Mr. Watson to this country?

A. It was for the purpose of making Scotch cheviots and a much finer grade of goods than what we have been making heretofore.

THOMAS WILLIAM WATSON, having been duly sworn, was examined as follows:

By Mr. CARR:

Q. In the spring of 1886 where were you living?

31 A. I was living in Batly, Yorkshire, England.

Q. Did you meet with a member of the firm of James Lees & Sons there?

A. Yes, sir. I did not meet him there. I met him in the Victoria hotel in Bradford.

Q. Which Mr. Lees was it?

A. Mr. John Lees.

Q. State what was the conversation between you.

A. The principal conversation that I had with Mr. Lees was in regard to the machinery that he had there.

Q. Had where?

A. At Bridgeport, at his mills.

Q. How did you happen to speak about that?

A. Of course us men were introduced to Mr. Lees, and we were drawn to him separately in regard to the work.

Q. What men were they?

A. Graham and two or three others, and a fellow by the name of Rider.

Q. Who brought you to Mr. Lees?

A. Mr. Umpleby.

Q. State what was said.

A. There were three or four questions asked. I asked questions and Mr. Lees asked questions in regard to the machinery they had and the goods they were going to make. The understanding that

I had was that they were going to make a certain kind of goods and improve the goods they had already been making. Of course I asked him what machinery they had in the different parts.

Q. You were engaged by Mr. Umpleby to come over to this country to work at Lees & Sons?

A. Yes, sir.

Q. Did you have a written agreement?

A. Yes, sir.

Q. Was it written at the time and signed at the time of this conversation?

A. No; Mr. Umpleby gave it to me some couple of weeks after that.

Q. Is this your contract? (Handing contract to witness.)

A. Yes, sir.

Q. Did Mr. Lees, in your conversation with him, say anything to you about the time you should sail?

A. I would not say whether Mr. Lees was particular about the exact date we should sail, but Mr. Umpleby and him together were particular in impressing upon us the necessity of coming early—within two or three weeks from that time. We sailed a month from that day.

Adjourned until Thursday, February 21, 1889, 10 a. m.

32 In the District Court of the United States for the Eastern District of Pennsylvania.

THE UNITED STATES
vs.
JOSEPH and JOHN LEES, Trading as James Lees & Sons. } Aug. Sess., 1886. No. 9.

Butler, J.

THURSDAY, *Feb.* 21, 1889.

Present: Mr. Read and Mr. Carr, for plaintiff. Hector T. Fenton, for defendants.

Examination of THOMAS WILLIAM WATSON resumed.

By Mr. CARR:

Q. You were speaking yesterday of an interview that you had at Bradford with Mr. John Lees in the presence of Mr. Graham and two or three other persons. Please state what, if anything, was said by Mr. Lees as to the execution of agreements concerning your coming to this country.

A. He was sitting by, and of course Mr. Lees stated that the agreements would be drawn up satisfactory, and everything would be made all right for us.

Q. Would you or not have come to this country if an agreement of that character had not been drawn up and executed?

(Objected to as incompetent. Objection sustained.)

The COURT: Did he or not come in pursuance of the agreements?

By Mr. CARR: Did you or did you not come in pursuance of the agreements entered into?

A. Yes, sir.

Q. Where did you go to in this country?

A. To Bridgeport, to Mr. Lees' place.

Q. An agreement with you was subsequently drawn up and executed?

A. Yes, sir.

Mr. Carr proposing to question the witness upon a paper shown him, counsel for defendants objects on the ground that whatever this witness, Watson, did, or whatever Mr. Lees did in the way of making a contract with Watson, has no bearing on Graham's case.

The COURT: Of course any agreement made with him, Watson, personally, unless it embraces Graham also, is not competent. As far as the witness has gone the testimony is entirely legitimate and proper. What you propose now to show is a separate and distinct written agreement with the witness, which in my judgment is not proper. I will therefore sustain an objection to the admission of the execution of this particular paper in reference to this single individual.

Cross-examination.

By Mr. FENTON:

Q. Please state when it was and where that Mr. Lees told you agreements would be drawn up satisfactory and everything made all right for you and the men.

A. At the Victoria hotel, Bradford, Yorkshire, England.

Q. When was this?

A. In the very early part of April, but I couldn't say the day.

33 Q. Are you willing to swear that he used the words "drawn up," intimating that any paper would be made in writing?

A. Yes, sir.

FENWICK UMPLEBY, having been recalled, was further examined as follows:

By Mr. CARR:

Q. You have already testified that you were the agent for Mr. Lees to contract with Graham to come to this country?

(Objected to. Objection sustained.)

Q. What was your conversation with Mr. Lees as to the employment of Mr. Graham?

(Objected to.)

Q. Had you any conversation with Mr. Lees as to the drawing up of a written agreement with Graham, Watson, or those men who came to this country at that time?

A. Yes, sir.

Q. What was the conversation?

A. When we were in the Victoria hotel the man says, "Well, do you think we can go to America without any agreement?" I says, "I don't know; I will go and see Mr. Lees about it." I went over and asked Mr. Lees if he was going to draw any agreements up. "Well," he says, "I will leave that with you." He says, "Of course I don't expect the men to go away without having some surety of work when they get there." To that effect; I wouldn't say the exact words, but to that effect. But it was left with I and Mr. Johnson.

Q. When did Mr. Lees sail to this country?

A. On the 8th of May.

Cross-examination.

By Mr. FENTON:

Q. Did you come over to this country in the same vessel with Mr. Lees?

A. Yes, sir.

Q. When did Graham come? After or before you?

A. After.

Q. How long after?

A. I think it was on the 29th of May when they sailed, but I won't be sure about the day—exactly the day—something about there.

Counsel for plaintiff offer in evidence contract between James Lees & Sons, Bridgeport, Conn. (?), and F. W. Graham, executed for James Lees & Sons by F. H. Johnson, May 7, 1886, and signed by F. W. Graham.

Objected to on the ground that this is not a suit by the Government against John S. Lees, but a suit by the Government against Joseph & John Lees, surviving partners of James Lees, trading as James Lees & Sons, and a verdict and judgment here will bind not only John S. Lees, but also Joseph Lees and the deceased partner, James Lees.

The COURT: This paper evidently is against James Lees & Sons. Whether or not the testimony in this cause will sustain a
34 verdict for or against the defendants in the form in which the suit is brought may be raised hereafter. It may be followed up by evidence, if it is necessary and if the Government has it, that John S. Lees was the executive agent of the firm of James Lees & Sons. I will admit the paper.

(Exceptions by defendants.)

Agreement read in evidence, same being as follows:

"An agreement made the seventh day of May, one thousand eight hundred and eighty-six, between James Lees & Sons, of Bridgeport, Connecticut, in the United States of America, woolen cloth manufacturers, of the one part, and Frederick William Graham, of Spa

Green, Lepton, near Huddersfield, in the county of York, dyer, of the other part, whereby it is mutually agreed by and between the said parties as follows; that is to say:

1. The said James Lees & Sons shall employ the said Frederick William Graham, and the said Frederick William Graham shall proceed to Bridgeport and shall serve the said James Lees & Sons in their trade or business of woolen cloth manufacturers, as dyer, for the term of twelve months from the date of his sailing from Liverpool to New York: Provided always, that if either of the said parties hereto shall be desirous of terminating and cancelling this agreement, it shall be lawful for them or him so to do at the end of the first six months of the said term, by giving to the other party a written notice to that effect, and in that event the said James Lees & Sons will, in addition to his wage, provide the said Frederick William Graham with a second-cabin passage back to Liverpool from New York.

2. The said James Lees & Sons shall pay to the said Frederick William Graham the sum of four pounds per week, as and by way of salary during said term, by weekly payments.

3. The said salary shall commence on the day the said Frederick William Graham sails from Liverpool to New York.

4. The said James Lees & Sons shall and will provide the said Frederick William Graham with a second-cabin passage from Liverpool to New York.

5. The said Frederick William Graham shall for the consideration aforesaid devote the whole of his time to faithfully and diligently serving the said James Lees & Sons in their trade or business of woolen cloth manufacturers as dyer to the best of his skill and ability, and shall obey and fulfill all the lawful and proper commands of the said James Lees & Sons in and about the discharge of such duties.

As witness the hands of the said parties hereto.

Witness to the signatures, signed for James Lees & Sons of F. H. Johnson & F. W. Graham.

F. H. JOHNSON.

7th May, 1886.

D. HALLAS,
Spa Green, Morefield. (Stamp.)

F. W. GRAHAM.

7th May, 1886.

By Mr. CARR:

Q. Do you know who the members of the firm of James Lees & Sons are?

35 (Objected to.)

A. You mean now?
Q. Yes.

The COURT: At the time you were there.
The WITNESS: John Lees and Joseph when I left.

By Mr. CARR:

Q. When did you leave?
A. I left—I don't know exactly the day when I left.
Q. About when?
A. I left on the 3d of May last year.
Q. These are the gentleman who are here?
A. Yes, sir.
Q. Do you know when James Lees died?
A. No, I don't remember the date exactly.
Q. About when?
A. Well, it was in the fall of the year before.

By Mr. READ:

Q. James Lees died after you and the other men came over from England?
A. Oh, yes, a good bit after that.
Q. Some time after that?
A. Yes, sir.

By Mr. FENTON:

Q. How do you know who were the members of the firm of James Lees & Sons?
A. I only knew by the orders given in the mill, that is all.
Q. You mean that these two gentlemen, Joseph and John Lees, gave orders in the mill?
A. Gave all instructions; yes, sir.
Q. By that you infer that they were partners?
A. Yes, sir.
Q. That is all you know about it?
A. That is all.

JOHN S. LEES, being recalled by Mr. Read, Mr. Fenton states that he renews his objection heretofore made to the witness Mr. Lees being examined on behalf of the plaintiff. (See p. 18.)

By Mr. READ:

Q. Who were the members of the firm of James Lees & Sons, when you made these engagements with these men in England?
A. James Lees, Joseph Lees, and John S. Lees.
Q. Were you acting for them?
A. Yes, sir.
Q. When did James Lees die?
A. I think it was the 5th of October, 1887; year before last.
Q. Since then has the business been continued by you and your brother?
A. The active management of the business has been conducted by me and my brother.
Q. The firm has not been changed in any respect except by the death of your father?
36 A. My sister has however an interest in it.

Q. The firm has not changed in any respect?
A. The style of the firm has not.
Q. The interest of your father is still in the business?
A. Yes, sir; the interest of my father is still in the business?

Plaintiff rests.

Mr. FENTON: I desire now to move for a nonsuit upon three grounds. Your honor admitted this contract in evidence, stating, as I understand your honor's remarks, that it was admissible if followed by any proof that John S. Lees was authorized on behalf of his codefendant, or of the firm to make such a contract.

The COURT: I did not mean to say it was admissible only on that ground. I said if it was necessary and the Government had proof with which to follow it, it might be followed by such proof, but I did not mean to say that it would not be admissible without being followed by any proof, in view of the proof previously given.

Mr. FENTON: I presume the Government relies upon this paper and not upon any verbal contract.

Mr. READ: That is a part of the proof.

Mr. FENTON: Under those circumstances if the agreement is in evidence in the cause as against the firm of James Lees & Sons, of course the action being brought in that way, I have nothing further to say upon that point. The other point is this: The act of Congress under which the suit is brought applies not only to the person importing the alien, but it applies to the alien. The first section of the act declares that it is "Unlawful for any person, company, partnership or corporation in any manner whatever to prepay the transportation or in any way assist or encourage the importation or migration of any alien or aliens, or foreigner or foreigners into the United States." I have not heard any evidence here yet that Graham, the person said to have been imported, is an alien.

Mr. READ: You will find he himself has so stated on page 1 of the testimony, in answer to a question by Mr. Carr: "You were at that time a subject of Great Britain, were you? A. Yes, sir. Q. Have you been naturalized or not? A. No, sir."

Defendants' Evidence.

JAMES B. LEONARD, having been duly sworn, was examined as follows:—

By Mr. FENTON:

Q. You reside in Philadelphia?
A. Yes, sir.
Q. Are you now or have you been in the last three years agent for James Lees & Sons?
A. I have represented their account with the firm of Lowe, Harem & Company and Joseph B. Lowe, their successor since that time.
Q. Are you familiar with fine Scotch cheviot cloths and with the so-called American cheviot?
A. Yes, sir.

37 Q. Prior to May, 1886, did John S. Lees, or any member of the firm of James Lees & Sons, call upon you with respect to a proposed manufacture of Scotch cheviot at their mill?

A. Yes, sir; it was a matter discussed between us.

Q. Please state exactly what was said as near as you can remember it, and the object of the conversation.

(Objected to as incompetent.)

The COURT: The witness can state that this subject was discussed and without going into the detail of their conversation he can state their conclusion, if they reached a conclusion, as to the manufacture of Scotch cheviot goods.

By Mr. FENTON:

Q. State what was done by you or by Mr. Lees in pursuance or in consequence of that conversation.

A. It was felt necessary that as long as there was a demand for those goods, Scotch cheviots, to try and secure proper help at the mills for their manufacture. The thing was gone into very fully, going over quite a period of time, our conversation from time to time, and then it was finally decided to try and secure that help, and I was asked to make inquiry as to the proper means of securing it by advertising for it in this country. I did so and put an advertisement in three papers covering several weeks, and also secured from Messrs. Lees & Brother textile papers published in this country in which advertisements of the wants are generally published. All the answers and the papers were handed over to these gentlemen at the mills.

The COURT: If you choose and if he knows, he can state what was the result of his inquiry; whether he found them, who was competent, and the result.

The WITNESS: Of course the details of answering these were handed over to these gentlemen to inquire into themselves as to their knowledge. Of course I was simply representing the concern in the market for the sale of their goods and for advising them to manufacture certain articles. But as a matter of fact none of these answers were satisfactory. That was my understanding.

By Mr. FENTON:

Q. At that time, in the spring of 1886, what was the difference in value between a piece of genuine Scotch cheviot and the American imitation of it? Generally, I mean.

A. In the market value there was a difference of certainly from forty to fifty per cent. in favor of the foreign goods in this market.

Q. Tell the court and jury the distinguishing characteristics between the genuine Scotch cheviots manufactured in England or abroad and the American so-called or imitation cheviots.

The COURT: I can see that that may become a pretty widely extended inquiry and may be a question on one side or the other, but are you required to go into that?

Mr. FENTON: I simply wanted to show by this witness two points to which I confine my inquiries with all the experts, which are that the distinguishing characteristics between a piece of Scotch cheviot genuine and the imitation are, *inter alia*, the coloring and the finish.

38 The COURT: If it becomes essential to your case you may show it, but at present it only extends the inquiry. The witnesses may express their judgment as to whether it is a new manufacture or not, and it is very proper on cross-examination to inquire into why they say so, and that may involve this question, but I do not think the duty devolves upon you of showing wherein newness consists or how extensive or slight it is. If it is a new manufacture for which laborers could not be obtained in this country, then you have a right to go abroad.

Mr. FENTON: That is the object of my inquiry.

Cross-examination.

By Mr. READ:

Q. The discussion between you and the Messrs. Lees in 1886 was as to the manufacture of cheviot cloth, was it not?

A. Yes, sir.

Q. Cheviot cloths were made in this country at that time, were they not?

A. Cloths called that name in this country.

Q. You know what I mean when I say a cheviot cloth, do you not?

A. No, I do not; because the American goods have never come up to the foreign goods.

Q. But cheviot cloths were made in this country and have been made in this country for some time?

A. Just as I said before, imitations of the English or the Scotch cheviot have been made in this country.

Q. What is a Scotch cheviot?

A. A Scotch cheviot is an all woolen article. It is made with a good deal of care in the preparation of the yarn. I am referring now to the English or Scotch goods. It is made with a great deal of care as to its color, as to its weave and as to its finish.

Q. Does it take its name from the fact that it is made from the wool of the sheep that feed on the Cheviot hills in Scotland? Is not that so as a matter of fact?

A. Well, it is a generic name you may give a thing, but——

Q. I want to know whether that is not the fact, that they are called because they are made from what is called cheviot wool?

A. I suppose in the ages gone by they have got their name from that.

Q. But is not that so as a matter of fact?

A. But I do not presume for an instant that all the Scotch cheviot made in England at the present time is made from the cheviot wool. That is a mere matter of opinion on my part; I do not know sufficiently what they are made of.

Q. Then as I understand you the only difference between them is that the Scotch cheviots are made with greater care, they are made of a more finely selected yarn and they have a better finish?

A. Well, it is the whole preparation of the article right from the time that the raw wool is taken in hand, and certainly in this country up to that time we never have seen it, or up to this.

Q. It has not been made here yet, has it?

A. No, sir; I haven't seen anything as good certainly as
39 the Scotch goods made here yet. It is an article that is very much imported into this country still.

Q. Is that not because the wool is not here to make them with without importing?

A. The wool isn't here.

Q. Isn't that so? Is not the Scotch cheviot made of a very fine grade of wool, and is not the American cheviot made of a coarser grade of wool?

A. Well, we have wools of all grades in this country. The importations and the amount of goods is sufficient to make any manufacturer who wants to make the goods get his wool in England and bring it over here.

Q. Then he could not compete with them there, could he?

A. He certainly could, with the duties that are on the foreign article at the present time, when it is manufactured at all.

Q. Is not that one of the reasons why it is not made here, that the fine wool has to be imported to make the Scotch cheviot? Is not that one of the reasons?

A. No, sir; I think not. I think it is entirely in the handling of the wool and in its manufacture.

Q. Was anything done by the Messrs. Lees that you personally know of following the discussion you had with them at that time?

A. When I handed them these answers?

Q. Yes, that you personally know of.

A. To secure help?

Q. Yes.

A. Yes, sir; I know that they saw more than one person in regard to it.

Q. How many?

A. Two that I know of. One of the men I was present when they did see him; the other I did not. I simply knew it from them. But of course a great deal of this I tell you is simply what these gentlemen told me at the time. They received I know a very large number of answers to those advertisements.

Q. I only want to know what you know personally about it.

A. That of course I couldn't answer.

By the COURT:

Q. You do not know who they saw?

A. I know one man that they saw.

By Mr. READ:

Q. And that is all you know about it?
A. Yes, sir; that is all I know about it.

The COURT (to Mr. Fenton): In view of the cross-examination you can go into the subject.

By Mr. FENTON:

Q. The imported goods are known as Scotch cheviots, you say? What is the name of the American? I mean with the trade, of course.

A. Well, I think it is more the short generic name of cheviots. I think that is what it is. The mere fact of the Scotch is not generally accepted. I think "cheviots" covers the ground both for imported and domestic.

Q. What do you know as to the efforts of James Lees &
40 Sons to make cheviot goods at their mill equal to the genuine goods and having the characteristics of the genuine goods?

A. I know that they made the attempt.

By the COURT:

Q. Before the importation of labor?
A. No, sir.

By Mr. FENTON:

Q. With these men?
A. With these men. I know they did that.
Q. Do you know whether or not with these men they succeeded?
A. They did not succeed in equalling the imported goods.

By Mr. READ:

Q. You are speaking now of your own knowledge, I presume?
A. Yes, sir.
Q. What you saw?
A. Yes, sir.

By Mr. FENTON:

Q. Do you know whether earnest efforts were made to accomplish that?

(Objected to as leading.)

A. Yes, sir.

Q. State any facts which would lead you to believe that they made earnest efforts to produce goods equal to the genuine goods—were samples shown you?

A. Yes, sir.

Q. Did you examine them?

A. Yes, sir; they made quite a quantity of goods after they had secured this labor. I certainly can say that they were not by any means equal to the foreign goods.

By the COURT:

Q. Do you know the reason of the failure?

A. No, sir; I haven't any technical knowledge of that kind. I only know the fact.

By Mr. FENTON:

Q. State in what respect the goods were a failure.

A. In the general effect of the goods. The goods were not as pliable. They didn't equal the foreign goods. That is really what the thing was, to bring it right down to that point.

Q. State the distinguishing points of difference between a genuine or imported cheviot and an American cheviot.

A. It is difficult to describe it, but I will do it as far as I can in regard to it. The foreign goods the yarns seem to have more elasticity, the color is superior to our American goods, and in the finish it is very decidedly so.

Q. What do you know about Mr. Lees having gone to Europe immediately after this conversation with you? Anything?

A. No, sir; I only know that he left for Europe, that is all.

41 FRANK H. ROMAINE, having been duly sworn, was examined as follows:

By Mr. FENTON:

Q. What is your business?

A. I am in the commission business in New York.

Q. In what line?

A. Commission woolens.

Q. Are you and have you been for the last three or four years familiar with cheviot cloths, both imported and domestic?

A. Yes, sir.

Q. Tell the court and jury whether any cloths having the characteristics of an imported cheviot are made in this country, or were made here in 1886.

A. No, sir.

Q. Not now?

A. You said previous to 1886. I say no, sir.

Q. Will you please state the distinguishing characteristic between the genuine or imported Scotch cheviot cloths and the domestic article in 1886?

A. As regards the foreign goods they were more durable, better colors, and they had a feeling which we have never been able to get here. The domestic goods are soft, mushy, and wear very poorly, and as a rule were a very poor color.

Q. Tell the court and jury how you distinguish between the two when you test them for the genuine and the domestic as you have shown.

A. Merely as a matter of education.

By the COURT:

Q. What are the tests? How do you know one from the other?

A. By the feel of them and the look of them.
Q. The reasons given already?
A. Yes, sir.

By Mr. FENTON:

Q. That is, the stiffness as against a mushiness, you said, I believe, and then you spoke of the color, and spoke of the finish, I believe?
A. Yes, sir; general knowledge of the goods.
Q. What knowledge have you of these goods, both kinds—how long?
A. I have been handling them for eighteen or twenty years.
Q. Much business, and how much about?
A. I can't say. I was eleven years at the foreign goods.
Q. How much have you sold of these cheviot cloths?
A. That I don't know.

By the COURT:

Q. Whether a large or a small amount?
A. I have sold a good many.

By Mr. FENTON:

Q. What do you call a good many? Give us a general idea.
A. In yards or dollars?
Q. Give us in dollars.
A. I have sold probably $100,000 of it.

42 Cross-examination.

By Mr. READ:

Q. I understand you to say the difference between the two cheviots, that is, the imported and the domestic cheviots, is in the stiffness, the color, the finish, and the feeling? Is that so?
A. As regards the stiffness you can make one piece of goods as stiff as another. I don't mean that at all.
Q. Then, as I understand you, the American cheviots can be made as stiff as the foreign?
A. I presume they can; yes, sir.
Q. There is no doubt about that?
A. I think there is considerable doubt about it.
Q. I say there is the same machinery here. Now, the color is made by dyeing, is it not?
A. In most goods it is; yes, sir.
Q. Is it not in these?
A. No, sir, not always. Not all of the colors.
Q. How are they made?
A. Natural color from the wool.
Q. Apart from the natural coloring that the wool has, the other coloring is made by dyes.
A. Yes, sir.
Q. And that is simply a question of coloring, and judgment in using the color, is it not?

A. It is a question of skill.

Q. It is a question of skill in applying the color?

(Objected to. Objection overruled.)

Q. Is the wool out of which the foreign cheviots are made of the same natural color as that of which the domestic cheviots are made?

A. I presume it is.

Q. Do you know?

A. I don't know anything about it.

Q. Is the yarn out of which the foreign cheviots are made of the same character as the domestic yarn?

A. No, sir.

Q. The yarn out of which Scotch cheviots are made is of a much finer quality, is it not?

A. If it is made of finer wool, it is.

Q. As a rule?

A. I don't know, as a rule.

Q. In what particular does the yarn of which the foreign cheviots are made vary from the yarn out of which the domestic cheviots are made?

A. Well, I don't profess to know or to say what there is in the yarn. If you will ask me what there is in the goods I can tell you, but when it comes to the yarn I don't believe I know enough about it to give you a direct answer.

Q. Except that you know there is a difference?

A. Except I know there is a difference in the goods.

Q. But you do not know what constitutes that difference?

A. I know it is constituted in the skill of making up the goods.

43 Q. Do I understand you that the variation in the texture which is made out of the two yarns is a question of skill?

A. Yes, sir; entirely. That is, of skill and of the products put in it.

Q. Which is most material?

A. The skill, I believe.

Q. What about the finish?

The COURT: I think the question is whether or not the cheviots abroad and here are made of the same character of material and manipulated in the same way, and whether or not it is a mere question of skill and handling.

Mr. READ: That will be my contention. That it was no new industry.

By Mr. READ:

Q. Do you know how the finish of the goods is produced?

A. Yes, sir.

Q. How? I mean cheviot goods, of which you have handled so many.

A. Gigged, brushed, sheared, etc.

Q. They have gigged, brushed, and sheared cloths in this country for a great many years, have they not?

A. I think they have.

By the COURT:

Q. Is there or is there not a difference between the character of work that is put upon the goods in the process of manufacture here and abroad? Is the manipulation and work upon the goods in the manufacture of cheviot cloths here and abroad the same except in point of skill?

A. Well, the result would lead me to believe it was not. The result, as it is shown in the prices, would lead me to believe it is not.

Q. What is not?

A. That it isn't the same manipulation here as abroad.

By Mr. READ:

Q. Do you know?

A. I do not. I have never been in Europe.

By the COURT:

Q. You think, then, the difference does not result from a difference in the manipulation or skill, but rather in the manipulation of the material?

A. I do think that is the difference.

Q. You do think the difference, then, between the cheviot manufactured here and abroad consists in the difference of skill employed here and abroad?

A. Yes, sir.

By Mr. FENTON:

Q. His honor, as I understand the question, desired to know whether the same manipulation of the cloth abroad was followed here, or whether it was a more skillful manipulation abroad than here. Which was it; the same or different?

A. I think the manipulation abroad was more skillful.

GEORGE K. MULLER, having been duly sworn, was examined as follows:

By Mr. FENTON:

Q. You reside in the city of Philadelphia?

A. Yes, sir.

44 Q. What is your business?

A. Merchant tailor.

Q. Whereabouts?

A. 1035 Chestnut; Hughes & Muller.

Q. You are a member of the firm of Hughes & Muller?

A. Hughes & Muller, yes, sir.

Q. Have you ever had any experience in the handling of imported and domestic cloth?

A. When I was a boy I handled cheviots in the house of De Courcy

Le Boutillier & Company, and have handled a great quantity of them.

By the COURT:

Q. That is, manufactured the cloth?

A. Cut them up and made them into garments.

By Mr. FENTON:

Q. You are then able to tell the imported cheviot from the American cheviot?

A. I think so.

Q. Will you tell us generally the difference in the price of the goods, or do you not know that?

A. There is a vast difference in the price.

Q. Is that ten, twenty, or fifty per cent. generally?

A. Well, I think, taking the highest grade of American cheviot and the highest grade of the cheviot which we import through the London market, there is a difference sometimes of seventy-five per cent.

Q. So far as you know, is there any cheviot made in the United States, or was there in 1886, having the peculiar characteristics of the genuine imported Scotch cheviot?

A. I never saw any.

Q. In the course of your business would you have come across such, likely, if there had been?

A. Yes, sir; because I am rather curious about American goods, and I always like to see samples.

Q. Do you do an extensive business in your line?

A. Yes, sir.

Q. What is the difference in the wear between the American and the imported cheviot cloths, generally? How do they compare in respect to wear or durability?

A. Well, there is a vast difference. The domestic article, I think, catches the dirt, bags at the knees, and it hasn't the elasticity.

Q. You have stated the difference in durability or wearing qualities. I want you to state, if you know, the reasons for your opinion as an expert user of such cloths.

A. I don't think it is possible to make as good goods in this country, because I have never seen them. As good cheviots.

Q. State the reason.

A. Of course I don't know anything about the manufacture of cheviots. I judge simply from what I have seen in the market. We have never seen any American cheviots that we would buy.

Q. What is the difference due to?

A. Well, I think, in the handling of the wool, the making of the yarns, the finish of the goods.

45 By the COURT:

Q. By "handling" do you mean the skill employed?

A. The skill? Yes, sir. The colors are brighter in the foreign article.

Q. Would you say it was due to skillful handling?
A. I should think I would.

By Mr. FENTON:

Q. So far as you are able to judge of the use of the goods, is that due to a more skillful manipulation in the process of manufacture, or to a different manipulation in the process of manufacture?

The COURT: He says he does not know anything about the manufacture.

Cross-examination.

By Mr. READ:

Q. There is quite a difference in imported cheviots, is there not?
A. Oh, yes.
Q. A wide difference?
A. Well, a great deal due to finish.
Q. And the better the finish the higher price the cheviot?
A. No, not necessarily.
Q. What is the difference between imported cheviots?
A. From what I have seen I think some of the low-priced cheviots bought abroad are better finish than the high-priced cheviots bought here.
Q. Is there not a difference between imported cheviots themselves?
A. A great difference.
Q. Now, I am asking you what that difference is?
A. Well, quality.
Q. Quality of what?
A. I suppose the wool. The colors in both qualities would be fairly equal, I think. In the finish, I think a low-priced goods can be finished almost as well as a high-priced over there.
Q. Is that all you know?
A. That is all.
Q. Did you ever buy any cheviots made by Robert Blakie at Hyde Park, Massachusetts?
A. No.
Q. You have never seen any of his cheviots?
A. I might have seen them in samples, but agents don't usually mention the manufacturer's name.
Q. Then you really do not know? You could not say whether you did or did not?
A. I don't know; no, sir.
Q. Did you ever see any of the cheviots manufactured in the Weybosset mills at Providence?
A. I might have seen them.
Q. But you do not know?
A. I ain't positive.
Q. Then when you state that, in your judgment, the imported cheviots are the best, you only speak of the comparisons made by you with the kind you usually buy and those which you have seen abroad?
A. Yes, sir.

46 JOHN S. LEES, having been recalled, was examined as follows:

By Mr. FENTON:

Q. Your mills are at Bridgeport, Pa.?

A. Yes, sir.

Q. What do you manufacture there?

A. Our principal product is worsted yarns and carpet yarns.

Q. Prior to the spring of 1886, tell us what you proposed to do then, in respect to the manufacture of a cheviot cloth of the character of the imported cheviot cloths. Tell us the whole story.

A. We knew there was a great difference in value between the cheviots made in this country and those made on the other side, and we saw that there was a chance for us to make money on those goods, and we endeavored, as Mr. Leonard told you, to get the help in this country; and no one presented themselves that we were satisfied would make the goods; in fact, we only had one applicant, I think, for the place, but not over two. Time went on and we wanted to get on with the goods, and I went abroad and secured these men; and I was pretty well satisfied—satisfied as well as I could be—that these men could make that character of stuff. In addition to that I brought with me samples of the real cheviot wools, so that we could use the same wools here as they used there, because there was sufficient margin, as we figured it, to pay us to import wools. There was enough difference in the value of the goods.

Q. You remarked that there was enough difference in the selling price of the cheviots here to pay you to import foreign goods and manufacture the goods here.

A. Yes, sir; and I brought the samples of the wools with me.

Q. Did you select these men personally over there or through somebody?

A. I selected these men through Mr. Johnson and through Mr. Umpleby. They said that they had no doubt that they could make these goods. Of course, if they had not satisfied me fully upon this point, I should not have brought these men with me. I had to depend entirely upon what Mr. Umpleby and Mr. Johnson said, because these men were all strangers to me.

Q. You brought them over. What did you do then?

A. I do not have a very great deal to do with that department—that is, with the woolen department; and therefore I think my brother would make a better witness than I.

Q. Take up the case of Graham, whose case we are now investigating. What did he do at the mill? What did you put him at?

A. He was a dyer.

Q. Did he make a success of his business as a dyer?

A. I don't think he did.

Q. How long did he stay with you?

A. I don't remember.

Q. State generally.

A. He was there perhaps a year or so. We struggled on.

Q. With respect to the finishing of the goods, state what machines are used in the process of finishing the cloths—finishing cheviot cloths?

A. We have a hot press, a brushing machine, and shearing machine.

47 Q. Is that the same kind of a machine that is used in making the American article?

A. I couldn't say that.

Q. Had you made the American article before?

A. No, sir; not before these men came here.

By Mr. FENTON:

Q. In the discussion of this matter with Umpleby, to which you have testified, did you ask him what machinery was necessary?

A. We had a talk upon that subject on the other side. He asked me what machinery we had in our place.

Q. Did you import machinery, or did you not, as he told you?

A. We imported machinery.

Q. Did that machinery include either the hot press, the brushing machine, and the shearing machine?

A. We had a hot press already. We imported the brushing machine and the shearing machine.

Q. Were those English machines brought over?

A. In accordance with Umpleby's directions.

Q. You knew about it yourself and took his advice?

A. Yes, sir; we followed his advice all the way through.

Q. What was the duty assigned to Umpleby? Was he the foreman, or an underworkman?

A. He had charge of the cloth department.

Q. Did you make inquiries prior to going to England to satisfy yourself whether or not cheviots having the characteristics and qualities of the English goods were then manufactured in the United States?

A. We were thoroughly satisfied that we could not get the help here necessary to make as perfect a piece of goods as what we were trying to make.

Q. State whether the cheviots made here had the characteristics and qualities of the English goods.

A. I only know that just from wearing the goods myself.

Q. That is not your department in the mill?

A. No, sir.

Q. What is the general amount of your business in the mill—your output?

A. About a million and a half to a million and three quarters dollars per annum.

Q. What does the ordinary dyer of woolen cloths get in the United States per week?

A. My brother can tell you better than I can. We have here the list that we were paying the class of help.

Cross-examination.

By Mr. READ:

Q. What was the man doing whose place was taken by Mr. Graham?

A. We were making kerseys at that time and making jeans.

Q. What did that man do?

A. He finished the goods that we were making.

48 By the COURT:

Q. He was a finisher?

A. Yes, sir.

Q. The man whose place Graham took was a finisher?

A. No; the man whose place Graham took was a dyer. Watson was the finisher.

By Mr. READ:

Q. The man whose place Graham took had charge of your dyeing-room, had he not?

A. Yes, sir.

Q. Was there anything new introduced into that room after Graham came here?

A. Not to my knowledge.

Q. And has not been up to the present time, has there?

A. No; not to my knowledge. Of course I don't have charge of that department, so far as the manipulation of the wool is concerned. I have charge of calculating the cost of the goods and in regard to the sales, but in regard to the manipulation of the stock I have not charge.

Q. All I want to understand is this: your dyeing-room is practically the same as it was when Mr. Graham came here, and as it was when the other man left?

A. I don't know.

Q. I understood you to say that when you came over from England, having engaged these men, you brought some imported wool with you?

A. Yes, sir; I brought some samples.

Q. Did you manufacture those samples?

A. No. They are only small samples; a half a pound or a pound.

Q. Have you ever manufactured what you call these Scotch cheviots yet?

A. I couldn't say whether they made an attempt to make the real goods or not.

Q. You cannot say, and you are a member of the firm, and are there every day?

A. No, sir; I know this: that we attempted to make a lower grade of goods, and did make a lower grade of goods, and we were unsuccessful in the manufacture of them, and therefore we did not think it worth while to attempt a better grade. That I have knowledge of.

Q. When did you commence the manufacture of this lower grade of cheviots?

A. I think it was immediately after these men came here.

Q. At that time you knew of course that cheviots were being manufactured in this country, do you not?

A. Yes, sir.

Q. Of the very grade that you then manufactured?

A. There is no doubt about that.

Q. That is the only kind of cheviot you did ever make?

A. As I said before, I won't say that we did not make an attempt to make a better grade.

Q. All that you will say is that you will not say that you did not make the attempt?

49 A. Yes, sir.

Q. But you will say that the only kind of cheviot that you did manufacture after you imported these men was that you made a low grade of cheviots which had been made long before that in the United States?

A. Yes, sir.

Q. What two machines did you buy in England?

A. The brushing machine and the shearing machine.

Q. Are you prepared to tell this jury that up to that time there had been no brushing machine made in this country or any shearing machine made in this country?

A. No, sir.

Q. On the contrary, you know that there have been?

A. I can't say that I know a very great deal about that.

Q. What do you use the double red rotary steam press for, called the Gessler?

A. That is for putting the steam in the goods and also for pressing. Those are the two objects of that machine.

Q. For putting the steam in the goods for pressing them?

A. Yes, sir.

Q. What kind of goods?

A. Any kind of cloth,

Q. The brushing machine which you spoke of is used to brush up the nap, is it not?

A. Yes, sir.

Q. Do you know anything about the cloth manufactory at Hyde Park, Mass.?

A. No, sir.

Q. You never have been there?

A. No, sir.

Q. Do you know anything about the Waposset mill at Providence?

A. No, sir.

Q. Do you know what they produce?

A. No, sir.

Redirect examination.

By Mr. FENTON:

Q. If Mr. Umpleby said anything to you about the necessity of bringing a dyer, please state to the court and jury what he did say.

The COURT: There is no question in my mind, and there will not be any in the minds of the jury about these men seeking to do just what they say; that they went abroad to bring these people here for the purpose of manufacturing the article known here as "Scotch cheviot;" that is a cheviot of the character and the quality.

The question will be whether or not this is a new manufacture. That is all there is in it. If it is simply an old manufacture producing better results by the application of a higher degree of skill, the court will charge the jury that it is not a new manufacture. It turns upon that question, whether this is a new manufacture or an old manufacture more skillfully conducted. If it is an old manufacture more skillfully conducted, I will charge the jury that the defendants are not within the proviso of this section, and if it is a new manufacture, that they are.

50 By Mr. FENTON:

Q. Have you any personal knowledge on the subject as to whether or not the manufacture of imported cheviots differ- from the manufacture of American cheviots in any degree of workmanship or in skill or different kind of skill?

By the COURT:

Q. You say you never manufactured cheviot before. Have you that knowledge?

A. I think from what I have learned since the men came here, and of course we have learned a good deal from these men, that there are both degrees and differences of skill.

Q. A difference in skill and a difference in manufacture?

A. Yes, sir. Both in degree and in difference.

The COURT: What he learned from these men is not evidence.

By Mr. FENTON:

Q. Did you learn anything on the subject of Scotch cheviot manufacture while you were abroad?

A. I don't remember that now.

JOSEPH LEES, having been duly sworn, was examined as follows:

By Mr. FENTON:

Q. You have heard your brother testify to the bringing to this country of Mr. Umpleby, Mr. Graham, and Mr. Watson?

A. Yes, sir.

Q. What do you know about the work done in your mills by those three men?

A. Their work was not satisfactory to us.

Q. What were their duties?

A. Mr. Umpleby was superintendent of No. 1 mill. That is where we make up cloth and where we also dye it and finish it.

Q. Who did the dyeing, and who did the finishing?

A. Frederick William Graham was hired for the dyer, and Watson was hired for the finisher.

Q. How much wages did you pay Graham?

A. We paid Graham $19.50 a week.

Q. What are the usual wages of a cloth-dyer?

A. Thomas Noble, the one we discharged, was getting $15.00.

Q. Are those the usual wages paid to a dyer in America?

The COURT: In my judgment, what the men were paid is of no value. I suppose sometimes they were paid according to their skill.

By Mr. FENTON:

Q. What department of the mill have you under your particular care? Are you the financial man or the manager of the mill?

A. My brother has charge of the finances and I have charge of No. 1 and No. 2 mills.

Q. You are familiar with the process of carding wools personally?

A. Yes, sir.

Q. What do you know about the difference between imported cheviot cloths and American cheviots in 1886?

51 A. The American cloth has got soapstone mixed through it; it does not have that grit in it which the Scotch cloth has that I have examined.

Q. The distinguishing characteristic between the imported and the domestic cheviots is what?

A. They don't handle the same, and don't please the trade as well.

Q. Is there any difference in the coloring, so far as you know?

A. Yes, sir. Those parties that we went to before making these goods told us——

Q. The question is about the difference in the coloring?

A. I could say this; there is a difference in the coloring from examining the goods.

Q. That is, examining the cloth?

A. Yes, sir.

Q. Have you examined the yarns before they went into the cloths?

A. Yes, sir. That is the yarn that we made.

Q. Tell the court and jury whether you made an honest and earnest effort with these men——

The COURT: I shall feel no hesitation at all in saying to the jury that the purpose of these people must be taken to be what they alleged it to be; that it was to manufacture a cheviot such as was known as the Scotch cheviot. This is not done to impugn the motives of these people at all. They defend by an effort to bring this within the proviso of this statute. If they say that the Scotch cheviot is a new manufacture, I shall have no hesitation in saying

that from the testimony before the court it would be unsafe to conclude that they were not honest in doing that, but the question will be whether or not it is a new manufacture, and that will be the only question.

By Mr. FENTON:

Q. State whether or not, in your opinion as a manufacturer of cloth in 1886, the manufacture, or your attempted manufacture of goods of the kind, characteristics, and qualities of imported cheviots was a new manufacture or simply an improved manufacture.

A. We thought it to be something new, because it had not been done before in this country.

By the COURT:

Q. You think it is new because it had not been done before?

A. Yes, sir.

By Mr. FENTON:

Q. You are familiar with the carding of wools?

A. Yes, sir.

Q. You have charge of the process of the manufacture of this cloth from the wool itself to the finishing department, have you not?

A. Yes, sir.

Q. You know what you are talking about from practical experience?

A. I think so.

Cross-examination.

By Mr. READ:

Q. You have stated broadly in answer to the leading question of your counsel that you regarded the manufacture of cheviot cloth as a new manufacture?

52 A. Yes, sir; that is, of Scotch cheviots.

Q. Do you mean to say that cheviots had not been made in this country before?

A. No, sir; I don't say that.

Q. Do you know how those are made?

A. I know how we made those of ours.

Q. Do you know how the cheviots, called Scotch cheviots, were made in this country before you commenced?

A. No, sir.

Q. You do not know?

A. No, sir.

Q. How do you know that the process that you proposed to commence was a new one?

A. Because we got people from abroad to teach the English system.

Q. It was a new manufacture to you? Is that what you mean?

A. To us; yes, sir.

Q. That is to say, that you had not manufactured Scotch cheviots before?

A. Yes, sir.

Q. And as you had not manufactured them, and you proposed to manufacture them, you called it a new manufacture; is that it?

A. We were also told they had never been made in this country.

Q. I want to know how the cheviots were made that were sold in this country as domestic cheviots before you commenced the manufacture of them.

A. I am not prepared to answer that.

Q. Will you tell me how you are able to say that the product that you proposed to make was a new one, when you do not know how those were made that were sold here before?

A. We intended, of course, to exceed anything we did before—to make a new departure.

Q. Are you familiar with the products of the Wapossett mills of Providence, Rhode Island?

A. No, sir.

Q. Did you ever see their cheviots?

A. Not that I know of.

Q. Did you ever see the cheviots manufactured by Robert Blakely, a Scotchman, at Hyde Park, Massachusetts?

A. I never did that I know of.

Q. Did you ever see the machinery that was used in the different mills that produced cheviot cloth before you made this?

A. I never saw them. I have been in one or two—not in any of the other mills.

Q. Then you do not even know what machinery they used to make their cheviot cloths?

A. I know what machinery they use, but of course I never saw the particular makes they used. We, of course, used the drying—that is, the shearing machine, the press, and the brushing machine, and so on.

Q. And the other machines?

A. Yes, sir.

53 Q. I want to understand you clearly. You say that the firms that manufactured the cheviot cloths that were sold in this country as Scotch cheviots, used a brushing machine?

A. Yes, sir.

Q. And used a shearing machine?

A. Yes, sir.

Q. And they used these other machines that you used, did they not?

A. Only we imported our brush machine and our shearing machine.

Q. In other words, you imported an English machine rather than use an American machine?

A. We sent them around to the different mills and they reported that these imported machines would do better work than we could find in this country. We had to go by what they had to say.

Q. The men that you employed in England, having worked on

the English machines, preferred the English machines to the American machines?

A. Yes, sir; they said they would do better work.

Q. But you know, as a manufacturer, that the American machines for shearing and brushing are practically the same as the English machines, do you not?

A. There is some little difference.

Q. What is the difference?

A. I can hardly explain that, but I say they told me at the time.

Q. Then you really do not know?

A. No, sir.

Q. You simply depended upon what these men told you?

A. That is it exactly.

Q. I understand you to say, that one of the differences between the domestic cloth and Scotch cheviots is, that the domestic cloth is hard and mixed with soapstone.

A. No; I didn't say it was hard. I said that the wool was a little coarser and sharper to the touch, while the domestic might have a litt-e soapstone, or some smooth substance worked into the cloth.

Q. The domestic had?

A. Yes, sir.

Q. The domestic had soapstone in it?

A. Yes, sir; I have felt it.

Q. Was that due to the quality of the wool?

A. They can put a substance in that that will give it that feel, but I don't know whether they did or not.

Q. You are a manufacturer, and you ought to be able to answer my question.

A. I am not able to answer that. It can be done, either by injecting something into it, or it might be done in the finishing; for instance, if you press a little more it gives the goods a little better feel. Or even steaming a little more will make a difference.

Q. That is simply a question of treatment, is it not?

A. It is a question of skill on the part of the operator.

Q. The method is precisely the same, of making the one as making the other?

54 A. Yes, sir.

Q. What is the other difference?

A. That is about all I can say.

Q. You mean a difference is the feel of the goods?

A. Yes, sir.

Q. And that, you say, is simply a question of skill in the treatment of the wool?

A. I say it might make a little difference in the wool. Some wools will feel finer after finish, no matter how you treat them, than others will.

Q. You say that the sole difference between the two is, first, it may be a difference in the wool?

A. Yes, sir.

Q. And secondly, a difference in the skill with which the wool is treated to make it into the cloth?

A. Yes, sir; either of those two points.

Q. The processes are both alike, are they not?

A. Some finishers may pursue some little difference in the details.

Q. Another difference you spoke of was a difference in the color. What is that?

A. For instance, the colors are generally brighter.

Q. The color in which?

A. In the imported fabric.

Q. Is not that due somewhat to the quality of the wool?

A. Of course; the whiter the wool is, the brighter color you can get on. And the cleaner it is got, the brighter it will take the color.

Q. After all, that is a question of condition and quality of the wool, is it not?

A. A question of skill on the part of the dyer.

Q. How long did you keep Graham in your employ?

A. I should suppose not over a year.

Q. About a year?

A. Somewhere thereabout. It might be more.

Q. What did he do while he was there?

A. He was our dyer.

Q. What did he dye?

A. He dyed everything that we used in the colors.

Q. I want to know what you made at that time while Mr. Graham was there.

A. We made up our minds, in the first place, to make a lower grade, so as to get the men trained, our other hands, before we undertook the better grades of Scotch cheviots. We put them on this work as a beginning, because should the thing be a fizzle, it would not be as much out of our pockets in making seconds as it would a better grade of goods. We started on these inferior cheviots, which we made up our minds to make until we had our men trained.

Q. Did you use imported wools for making these cheviots that you manufactured?

A. No, sir; we used domestic wools.

Q. You used the same machine for dyeing all the time that Graham was there, did you not?

55 A. No; we made some few changes, but they were immaterial.

Q. You are using the same now?

A. We are using the same now.

By Mr. FENTON:

Q. In the process of the dyeing and in the process of finishing the goods, did you follow the instructions of Mr. Umpleby?

A. Yes, sir.

Q. Exclusively?

A. Exclusively, because I say we brought these men here at great expense to ourselves, and paid them a great deal more pay than those we put away.

(Defendant- closed.)

LAWRENCE H. LOVE, having been duly sworn, was examined as follows:

By Mr. CARR:

Q. Where do you live?
A. Wilsonville, Windrom county, Conn.
Q. What is your occupation?
A. Overseer of the weaving-room.
Q. In what mills?
A. Wilsonville mill, Connecticut.
Q. What is their output?
A. I don't understand what you mean.
Q. What is the manufacture?
A. He is going into the Scotch cheviots. They are not exactly started yet.
Q. How long have you had knowledge of the woolen business, and the manufacture of woolens and cloths?
A. I have been working in woolen mills ever since I was twelve years old.
Q. Where have you been working?
A. In Maine, New Hampshire, Rhode Island, Connecticut, Pennsylvania, and New York State.
Q. How long have cheviot cloths been made in this country?
A. They have been made to my knowledge nearly as long as I can remember. My first work on them was at Robert Blakeley's mills, Hyde Park, nine years ago.
Q. Have you seen imported cheviot cloths?
A. Yes, sir.
Q. What do you know about the difference between the American and the imported?
A. The real difference, to my knowledge, seems to be more in the material they are made of.
Q. That is, in the wool?
A. In the wool.
Q. Is it possible to distinguish grades of American cheviots from the imported cheviots?
A. Oh, yes, sir.
Q. Which are the better?
56 A. They claim the foreign cheviots are better, but we have a great many manufacturers in this country who make foreign cheviots.
Q. Who do make cheviots which are sold as foreign cheviots?
A. Yes, sir.
Q. What are those manufacturers?
A. Robert Blakeley is one, for instance. He is at Hyde Park, Mass.
Q. How long has he been making them?
A. Before I remember.
Q. How long is that?
A. He was in it in Scotland, before he came here, and he must have been in it, to my knowledge, over twenty years. He was not

in Hyde Park at that time; he was manager in the Riverside mills, in Providence. I don't know exactly if that is the name of the firm at that time, twenty years ago.

Q. Did you know the goods that were turned out by Messrs. Lees & Sons?

A. Yes, sir.

Q. Did you know them in 1886?

A. No, sir.

Q. Is there any difference in the method of dyeing American cheviots from the method of dyeing any other kind of woolen cloths?

A. That I cannot say. I am not a dyer.

JOHN DYSON, having been duly sworn, was examined as follows:

By Mr. CARR:

Q. What is your occupation?

A. Boss weaver, or loom boss.

Q. How long have you been in that employment?

A. Twenty-five years—in that neighborhood.

Q. Were you employed by Messrs. Lees & Sons?

A. Yes, sir.

Q. When?

A. I worked there in the early spring of 1884.

Q. How long did you remain there?

A. Remained until 1887.

Q. What were the goods that were turned out by Messrs. Lees & Sons, if you know, prior to May, 1886?

A. They had been making Kentucky jeans of different grades, and some blankets prior to 1886.

Q. What were the goods turned out after 1886?

A. They still kept on them, the same thing, and they introduced a boneta.

Q. What character of goods was the boneta?

A. I suppose they would term them a sort of cheviot. We termed them boneta. That was the term they went by there.

Q. Did you have knowledge of the method of dyeing the wool turned into the boneta?

A. No, sir.

Q. You didn't see that?

A. No, sir.

57 Q. Do you know whether there was any change made in the process of dyeing?

A. Not to my knowledge there was not.

By Mr. FENTON:

Q. Do you know anything about it?

A. No; I don't know anything about it.

By Mr. CARR:

Q. If there had been a change you would have known it, would you not?

A. No. There possibly might have been a change and me not know it.

THOMAS NOBLE, having been duly sworn, was examined as follows:

By Mr. CARR:

Q. You are a dyer?
A. Yes, sir.
Q. And you were in the employ of Messrs. Lees & Sons?
A. Yes, sir.
Q. When?
A. I went there in August, 1885.
Q. When did you leave?
A. June the 9th or 10th, 1886.
Q. How long have you been in the dyeing business, employed or engaged in dyeing?
A. I have been in the business ever since I have been about eight years of age. I was born in 1851, August 2d. I have been in it sixteen or seventeen years.
Q. You have been a dyer ever since?
A. I am still at the same business.
Q. Is there any difference in dyeing woolens to be made into American cheviots from dyeing woolens to be made into other kinds of cloths?

By the COURT:

Q. Do you know how the dyeing is done for the Scotch cheviots abroad?
A. There are only three colors that are followed in dyeing; that is blue, red, and yellow, and all shades have got to be taken from these colors.

By Mr. FENTON:

Q. Do you know anything about the dyeing of woolens for Scotch cheviots abroad?
A. I know nothing about what there is abroad.

By Mr. CARR:

Q. Is there any difference in dyeing wool for American cheviots and wool for other cloths?
The COURT: He knows nothing about how wool would be dyed elsewhere. Do you know more than one method of dyeing wool?
A. There are different ways of dyeing wool, of course. Just according to what kind of wool it is.

By Mr. CARR:

Q. According to the character of the wool?
A. Yes, sir.
58 Q. Does not the method and mode of dyeing depend upon the kind of goods into which the wool is to be manufactured?

A. It mostly depends upon the skill of a man in coloring the wool.

Q. What was the machinery used in Lees & Sons' mill when you were there? Was there anything different from the machinery that you know of being used in other mills in this country for dyeing?

A. No, sir.

(Objected to, because the witness left before the work in question was begun.)

FREDERICK WILLIAM GRAHAM, having been recalled, was examined as follows:

By Mr. CARR:

Q. You went into the employ of Messrs. Lees & Sons in May, 1886?

A. Yes, sir.

Q. Was there or not any change made in the machinery used by you as a dyer there after your going into their employment?

A. No, sir.

Q. What was the character of the goods turned out by Messrs. Lees & Sons during the time you were there? What was the grade or kind of goods?

A. What they termed bonetas, jeans, kerseys, and blankets

Q. You are familiar with the methods of dyeing woolens in England, are you not?

A. Yes, sir.

Q. You are still a dyer in this country since you left Lees & Sons, are you not?

A. Yes, sir.

Q. Please state whether, in 1886, there was any difference between the appliances and machinery and method of dyeing used in England, and the method of dyeing used here, when you came to Messrs. Lees & Sons,?

A. I don't think there was. That all depends on the dyer.

By the COURT:

Q. That is the skill?

A. Yes, sir. Sometimes a man may have a different method from me.

By Mr. CARR:

Q. During your conversation with Messrs. Johnson and Umpleby, in England, or with Mr. Lees, or in the presence of Mr. Lees, was there anything said to you about your coming to this country for the establishing of a new industry?

A. Mr. Umpleby told me he was going to come out to manufacture fine goods. He didn't say what those fine goods were, or didn't name them. He just classed them as fine goods.

Cross-examination.

By Mr. FENTON:

Q. Mr. Umpleby engaged you to come here?

A. Yes, sir.

Q. Did you do the dyeing for the wools for fine Scotch cheviots in England?

59 A. I don't know about Scotch cheviots. I dyed everything they brought to me in regard to fine wool and coarse wool; I didn't take notice what they manufactured them into.

Q. Do you know what Lees manufactured them into?

A. They manufactured them into bonetas.

Q. Do you know that?

A. Yes, sir; I followed it up there. I went up into the picker-house where they mixed these goods.

Q. You followed it up to the looms?

A. I didn't follow it up to the looms; I followed it up to the next room after it left me.

Q. But not to the weaving-room?

A. No, sir.

Q. Then you don't know it was made into cloths?

A. Only what Mr. Umpleby said.

Q. You don't know any more than you know about the English goods?

A. I don't profess to understand manufacturing. I profess to understand dyeing. If they give me a certain class of wool to dye, I dye it to the shade they say, and I understand anything about dyeing.

Q. You said you did not know where the yarn you dyed in England went to. I ask you the same question in regard to Lees' mills. Answer of your own knowledge.

A. I only know what I was told.

Q. Is there any special skill required in dyeing woolen yarns on the part of the dyer?

A. That is what I said before; that depends on the man—the dyer.

By the COURT:

Q. Does dyeing properly require skill and experience?

A. Yes, sir; certainly.

By Mr. FENTON:

Q. Skill of a particular kind, or skill simply in general workmanship? Do you have to know anything about chemistry? Do you have to know anything about colors and mineral?

A. Yes, sir.

Q. Did you or did you not in your department just follow the same system at Lees' mills when you came there that you followed when you left England?

A. Yes, sir.

Q. Exactly?

A. Yes, sir.

THOMAS WILLIAM WATSON, having been recalled, was examined as follows:

By Mr. CARR:

Q. Are you familiar with the methods of finishing woolen goods in England, and were you prior to 1886?

A. Yes, sir.

Q. For how long had you been in that trade?

A. I spent my life in it, since I was fourteen years of age.

60 Q. You found, of course, certain machinery when you came to Messrs. Lees & Sons' in May or June, 1886, to carry ony our work?

A. Yes, sir,

Q. Was it or not different from the machinery used in England?

A. Yes, sir; it was different.

Q. For what purpose was the machinery that you found there?

A. For dressing the cloth.

Q. That is, for steaming, was it?

A. Yes, sir.

Q. And brushing?

A. Yes, sir; steaming, pressing, and shearing.

Q. How long did you continue to use that machinery that you found there after you came to Messrs. Lees & Sons'?

A. As near as I can recollect, about five months.

Q. Was there anything said to you during your conversation with Mr. Lees in England as to his intention to engage in a new industry, and that you were to take part in that?

A. Yes, sir. He said he was going into some finer grade of goods. He said that he had made a class of kerseys, and that he intended to go into a finer grade of goods. He was going to build a mill purposely.

Cross-examination.

By Mr. FENTON:

Q. You, as a finisher, suggested the importation of some English machines for brushing and finishing, did you not?

A. Yes, sir.

Q. And they were imported?

A. Yes, sir.

Q. And put in the mill?

A. Yes, sir.

Q. You worked on them?

A. Yes, sir.

Q. For finishing what, cheviots?

A. No, sir.

Q. What did you finish, bonetas?

A. Kerseys and bonetas.

Q. The American machinery which you found there differed from the English machinery in what respect generally?

A. It aimed at the same result.

Q. Was it different machinery?
A. Yes, sir; different machinery in its construction.

By the COURT:

Q. But aimed to produce the same result?
A. I didn't say it produced the same result.
Q. Do you mean it was better?
A. I didn't say it was better. I said it was differently constructed, but they both aimed at the same result.
Q. Which was the better for the result?
A. I advised the best to my opinion.
Q. You advised that because you thought it was better to produce that result?
A. Yes, sir.

61 FENWICK UMPLEBY, having been recalled, was examined as follows:

By Mr. CARR:

Q. In your conversation with Mr. Lees in England, what did he say to you, if anything, as to his intention in the importation of these men and of yourself?
A. Concerning what?
Q. His intention; what he meant to do.
A. I asked him what he was doing and he said he was making kerseys. I said, "What is a kersey?" not knowing it by that term; he says, "It is a low grade of army cloth," or something of that kind. I says, "What do you intend to do now?" He says, "We want to improve; we want to rise and do a better class of trade than we are doing, and make something better."
Q. You were familiar in England with the method of dyeing woolens in 1886, were you not?
A. Yes, sir.
Q. What was the difference when you came to Messrs. Lees & Sons' in the method of dyeing practiced there?

(Objected to.)

The COURT: He can state what he saw was the practice of dyeing there and state how the practice at this mill differed from it, if it differed at all.

By Mr. CARR:

Q. You have knowledge of how the wool was dyed at Messrs. Lees & Sons' when you came there?
A. Yes, sir.
Q. In May or June, 1886?
A. Yes, sir.
Q. You saw that?
A. Yes, sir.
Q. What was the difference, if anything, between the way in which they dyed it and the way it was done in England?

A. I don't know of any.
Q. What as to the machinery that was used?
A. I didn't see any different machines.

By the COURT:

Q. Or in the dyestuff?
A. The dyestuff I did not handle.

By Mr. CARR:

Q. You were familiar in England in May, 1886, with the method of finishing cloth, were you?
A. Yes, sir.
Q. And you saw what method was used at Messrs. Lees & Sons' when you came here in May or June, 1886, did you?
A. Yes, sir.
Q. Was there any difference?
A. At Lees' mills at that time of course they were in different kind of trade; they were in this Kentucky jean trade and a low cheviot trade and that was a little different, because it was done on the narrow pieces, and what I had been used to doing was done in the broad piece. They introduced this broad machinery, be-
62 cause they were going to make a broader cloth. They had a narrow one. We brought this broad machine. But the result is the same. One is narrow and the other is broader.
Q. That was the reason why this new finishing machine was introduced?
A. Yes, sir.
Q. The breadth of the cloth?
A. Yes, sir.
Q. During the time that you were at Messrs. Lees & Sons' did they turn out any cheviots?
A. No.

Cross-examination.

By Mr. FENTON:

Q. Did you bring here with you some samples of cheviot wools?
A. I did.
Q. Any quantity?
A. No.
Q. What did you bring them here for?
A. Because they were given to me, and I always kept a collection of goods.
Q. Did you bring them over in connection with your prospective employment at Lees' mills?
A. No, sir; I did not.
Q. Did Mr. Lees say anything to you in England about cheviots?
A. I don't remember. Nothing at all about cheviots. I don't think it was ever mentioned once.
Q. Do you know what dyestuffs go into the dyeing of woolens and yarns?

A. I know what dyestuffs go into them, but I don't know the component parts. That goes to the dyer.

Q. Are you able, as an expert, to distinguish one mode of dyeing from the other modes and manners which produce colors?

A. No; I am not.

Q. So far as you are an expert in that line, you cannot tell whether the mode of dyeing at these mills was the same as in England or not?

A. Only by the general routine.

Q. You don't know what Lees did at their mills in the way of dyeing before you came to this country?

A. The old dyer was there a week or two after I got there, and I watched him.

Q. He was there a week or two and then you brought Graham?

A. He was coming at that time.

Q. He followed you about a week or two?

A. A month, about.

Q. You selected Graham abroad?

A. Yes, sir.

Q. Why did you select him?

A. We put an advertisement in the paper and he was the only applicant.

Q. Why did you select him; as an expert dyer?

A. Just as a good dyer.

63 Q. As competent in the dyeing of woolens?

A. Yes, sir.

Q. It was your belief that he was competent according to the English system?

A. Yes, sir.

Q. When he came here he was put upon the English system, was he?

A. He was put upon his own system. I don't know what system he calls it.

Q. The system he was accustomed to in England?

A. Yes, sir.

Q. That is what he was brought for, is it?

A. Yes, sir.

(Evidence on behalf of Government closed.)

Mr. Fenton handed points to the court, calling attention of the court to the fourth, fifth, sixth, seventh, eighth, ninth, and tenth points, which relate to constitutional questions.

Fourth, fifth, sixth, seventh, eighth, ninth, and tenth points of defendant overruled. Exception for defendant.

The COURT: The Government must show in the first instance a violation of the statute by the encouragement, aid, or solicitation of these men to come to this country in pursuance of a contract to perform labor here. The evidence respecting that is for the jury.

The next question is whether or not the case falls within the proviso of this statute. Whether it does depends upon whether or not

the defendant has shown that these men were brought here in the language of the statutes as skilled laborers to be employed in a new industry.

The testimony on that subject is for the jury, and as respects which, as at present advised, I shall have to say to the jury if the manufacture of goods that was proposed to be carried on by the use of this labor existed here before, and the purpose was simply to improve the character of the product of the manufacture by the introduction of a higher degree of skill, then it is not a new industry; that it is simply the improvement of an old one. That what is meant by the introduction of a new industry is precisely what the terms of the statute express, a new industry and not an old industry improved by the introduction of a greater amount of skill. If when they commenced manufacturing steel rails in Great Britain, when we were manufacturing iron rails only here, and the manufacturer desiring to produce steel rails had gone to England and employed labor skilled in the manufacture of steel rails with a view of establishing it here, and brought competent laborers here and applied them to that industry, that would have been an industry within the terms of the statute. If, on the other hand, the object was to manufacture a better article of iron rails than we had manufactured before, manufacturing them in the same way, but by the application of a higher degree of skill, men of greater experience, I should say to the jury that is not the meaning of the statute.

It will be for the jury to say, on all the evidence, whether these men were employed and brought here for the purpose of being used in a new industry within the meaning of the statute thus explained.

(Opening by Mr. Carr on behalf of the Government. Adjourned until — p. m.)

64 *Defendants' Points.*

1. To entitle the plaintiff to recover, it must be satisfactorily proven that the defendants before the migration of the alien expressly authorized or assented to the making of the illegal contract with him by Johnson or Umpleby; proof of subsequent assent is not sufficient.

2. To entitle the plaintiff to recover, it must be satisfactorily proven, not only that the alien, previous to his becoming a resident of the United States entered into a contract to perform labor or service here, and that he actually migrated or entered into the United States in pursuance of such contract, but also that the defendants prepaid his transportation or otherwise assisted, encouraged or solicited his migration, with knowledge, previous to his migration, that he had actually entered into such a contract.

3. The plaintiff is not entitled to recover, if the business or employment for which the alien migrated was the manufacture in whole or in part, of goods not then manufactured in the United States, and for which competent skilled labor could not then otherwise have been obtained.

4. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States in any foreign country which would not be unlawful if done or made within the jurisdiction of the United States.

5. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his emigration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States with a citizen or subject of any foreign country, which would not be unlawful if done or made with any citizen of the United States.

6. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States with a citizen or subject of any foreign country previous to his emigration to this country, which would not be unlawful if done or made with such alien after his arrival within the United States.

7. The plaintiff is not entitled to recover because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void because it is not within the power of Congress to enact any laws which make unlawful any acts of a citizen or alien, which is exclusively the exercise of a police power.

65 8. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful and peaceable occupation or employment of an alien after he shall have become a resident of the United States, or with his otherwise lawful and peaceable object or intention in migrating to the United States, or with any otherwise lawful inducement held out to him to become a resident of the United States.

9. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful act of a citizen of the United States relating to his private business or affairs merely because entered into with an alien, resident in a foreign country, and who was then otherwise at liberty to come to the United States.

10. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void because it is not within the power of Congress to enact any laws which make unlawful such otherwise lawful act of a citizen of the United States, however much such law may be valid to prohibit the landing of such alien emigrant in any port of the United States.

11. If the jury believe, from the evidence, that the manufacture of fine cheviot cloths was not, at the time of the importation of such alien, fully understood nor carried on within the United States, then the importation of said alien for the purpose of manufacturing such goods by the defendants was, in effect, the establishing of a new industry comprised within the proviso of the act under which this suit is brought.

12. If the jury believe, from the evidence, that the alien in question was brought to the United States to aid in the manufacture, in whole or in part, of a character of cloth not then manufactured in the United States, and for which competent home labor could not then be obtained, then such act of importation is within the proviso of the law in question, and your verdict should be for the defendant.

Charge of Court.

GENTLEMEN OF THE JURY: By the statute approved February 26, 1885, Congress provided:

"That from and after the passage of this act, it shall be unlawful for any person, company, partnership, or corporation in any manner whatever to prepay the transportation, or in any way assist or encourage, the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its territories, or the District of Columbia, under contract or agreement, parol or
66 special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

Second. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person or company, partnership or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service, or having

reference to the performance of labor or service, by any person in the United States, its Territories, or the District of Columbia, previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

Third. That for every violation of the provisions of section 16, the person, partnership, company, or corporation violating the same by knowingly assisting, encouraging or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories, or the District of Columbia, to perform labor or services of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming a resident or citizen of the United States, shall forfeit and pay for such offence the sum of one thousand dollars, which may be sued for," &c.

The fifth section contains a proviso which it is equally important should be understood:

"Nor shall the act be so construed as to prevent any person or persons, partnership or corporation, from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States, provided the skilled labor for that purpose cannot otherwise be obtained."

Thus you see the scope and purpose of this statute. It is in substance, and so far as relates to the purposes of the case before us, to prevent any one from entering into contract with a foreigner or foreigners, and soliciting or persuading or aiding foreigners thus entered into contract with, to come into this country and perform labor.

Where, however, a new industry is undertaken here, and skilled workmen, such as are required in carrying out the purposes of the enterprise cannot be found here, and can only be obtained by going abroad and bringing foreigners or aliens, then the statute does not apply.

I need not enlarge upon the subject. These provisions have several times been read in your presence, and have been so fully referred to by counsel, that you cannot fail to understand them.

The defendants in this case, Joseph and John Lees, are sued for a violation of this statute. There is nothing in the form of the suit that prevents recovery if the facts are made out. The defendants are Joseph and John Lees and no other. All else besides these names in the designation of the parties to the suit is merely descriptive. The language is: "The United States of America *vs.* Joseph Lees and John Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons." Your verdict here, if it is for the Government, will involve John and Joseph Lees and nobody else.

67 To justify you in finding a verdict for the plaintiff, you must be fully satisfied by the evidence that these defendants, either directly or indirectly, personally or through an agent or agents, entered into contract with Mr. Graham (because it is the bringing

of Mr. Graham here that is charged in the complaint), to come to this country and perform labor, and that they solicited him to come, or held out some inducement or persuasion to come. If they paid his passage that would probably be as forcible and effectual inducement or solicitation as could be employed. If they did this they are liable as charged by the government, and your verdict must be against them, unless you find that Mr. Graham was brought here by them for the purpose of engaging in a new industry not at that time established in the United States, and for which workmen could not be here obtained.

Now, did the defendants enter into a contract with Mr. Graham abroad to come to this country? And did they solicit or induce or encourage him to come? That somebody entered into a contract with him, and that somebody solicited, encouraged and induced him to come, is not open to controversy; he came in pursuance of a contract and in pursuance of such inducement and solicitation. Did the defendants thus bring him? They are evidently candid and very respectable men, who came here to answer this claim not by quibbling about the facts, but by an assertion of what they suppose to be their rights under the law; if they did wrong they do not believe so. They went upon the stand and told you they had not formerly been engaged in manufacturing cheviot cloths of any kind; that they came to the conclusion, in view of the prices paid in this market for what are known as imported Scotch cheviots, that money was to be made out of that business; and further, that they could bring workmen here from abroad and manufacture these cloths at such prices or rates as to make money by the transaction.

Joseph Lees tells you that in pursuance of this John went abroad, and John tells you the same thing. He went abroad, not for himself, but for himself and his brother; he was there as his brother's agent, as well as on his own account. He tells you what he did when he got abroad; that he saw Umpleby and Johnson, the latter being what is called a general agent, a man who accepts agencies to employ workmen for others; that he made his purposes known; (I think he advertised), and he came in contact with the people who were brought to this country. He tells you distinctly that he authorized Mr. Umpleby and Mr. Johnson to make contracts for him to obtain workmen and have them come to this country.

Mr. Umpleby tells you that after he had been in communication with Mr. Graham and others they hesitated about coming; they wanted something in writing, and he says he saw Mr. John Lees, I think, with Mr. Johnson, and said to him, "These men want a contract in writing; they want something fixed;" that Mr. Lees said to them, "Well, I depend upon you, Mr. Umpleby and Mr. Johnson; you make contracts for me," and that in pursuance of this they did so. This was a full authorization of Mr. Umpleby and Mr. Johnson to do what it is alleged they did, contract with Mr. Graham to come to this country.

Mr. Lees tells you himself, that after this contract was put in writing and shown to him, and when the men were present, it
68 occurred to him that he had not authorized Mr. Johnson to

enter into a writing; that he said he did not object to it, but assented and the men came here in pursuance of it. I do not mean to give you binding instruction about this, but I have no hesitation in saying to you that it seems to me to be entirely clear upon this testimony that Mr. John Lees did, in this way, through his agents, enter into a contract with Mr. Graham to come to this country, and did authorize Mr. Johnson and Mr. Umpleby to solicit and procure him to come.

He and others came and went to work. Not only John but Joseph accepted their services in pursuance of this contract, which of itself would be evidence that Joseph had assented beforehand to the making of the contract, and the bringing of these men over; and Joseph tells you they paid wages in pursuance of the contract, and as he understands it; also paid the passage money that had been furnished by Mr. Johnson on their account in England.

I repeat, as far as the first branch of this case is concerned, as far as respects the question whether these defendants did enter into a contract with Mr. Graham, abroad, to come to this country and perform labor, and did solicit and induce him to come, there does not seem to be room for reasonable doubt. Still I do not take the question from you; it is for you to say whether it is shown beyond doubt that these defendants did, through their agent, enter into a contract with Mr. Graham, to come here and perform labor, and solicit and induce him to come. If they did not, your verdict will be for the defendants. If they did, you will pass to the second question, which, also, must be found in favor of the Government, before it, the Government, is entitled to your verdict.

Supposing the defendants did enter into this contract, and did solicit or induce Mr. Graham to come, was he brought here to engage in a new industry not at that time established in the United States, and for which laborers could not be found here?

You have heard the testimony respecting the circumstances under which he was brought; he came to assist in the manufacture of cheviot cloths, such as are known in the market as Scotch cheviots. Was that a new industry? If cheviot had not before been manufactured in this country, and our people were unfamiliar with its manufacture, so that workmen skilled in that industry could not be found here, the defendants would have been justified in going abroad, entering into contract with and soliciting laborers to come here for the purpose of assisting. It would then have been a new industry.

But cheviot cloths were manufactured here long before. The difference, according to the testimony, between cheviots manufactured here and those from abroad has been described to you. Now, are the cheviots manufactured abroad essentially a different article from that manufactured here, or are they simply the same article of a better quality? If it is a different kind or description of cloth, if cloths belonging to that class, falling under that designation, were not manufactured in this country, it was a new industry; but if the cheviots manufactured abroad were manufactured in the same way as those made here, from the same description of materials, with the

same character of manipulation, but by men of higher skill, the employment of greater care and more time, then the manufacture of them here is not a new industry.

69 How are the facts? I need not enlarge on them. You have the testimony of the witnesses. To my mind (yet the question is entirely for you), there was no material disagreement in the statements of the witnesses on this subject. Those of them who are familiar with the manufacture of cheviots generally say the only difference between foreign and domestic cheviots consists in the greater degree of skill brought to bear in the manufacture of the foreign article. Some thought there was a difference in the material; the wool might be finer or of a different grade; but that would be unimportant.

The men were brought here to assist in the manufacture of cheviots. It was a new enterprise with these defendants, but was it a new enterprise in this country? Did they mean to do anything more than to make a higher quality of cheviots than had theretofore been made in this country, by the use of greater care and skill? If that was all it was not a new industry.

I have been asked on behalf of the defendants to instruct you upon a number of points, as follows:

"1. To entitle the plaintiff, the Government, to recover, it must be satisfactorily proven that the defendants, before the migration of the alien, expressly authorized or assented to the making of the illegal contract written by Johnson and Umpleby. Proof of subsequent assent is not sufficient."

The court has already spoken on this subject. We say again, as we have said before, that to entitle the Government to recover, it must appear that these defendants directly or indirectly entered into a contract—that is, by themselves or their agents—with Mr. Graham to come to this country for the purpose of performing labor here; that the contract must have been entered into before he came.

"2. To entitle the plaintiff to recover, it must be satisfactorily proved not only that the alien, previous to his becoming a resident of the United States, entered into a contract to perform labor or service here, and that he actually migrated or entered into the United States in pursuance of such contract, but also that the defendants prepaid his transportation or otherwise assisted, encouraged, or solicited his migration, with knowledge previous to his migration that he had actually entered into such a contract."

I have already said all that is necessary in answer to this point. I repeat, if they entered into contract with him directly or indirectly, personally or through their agent, to come to this country to perform labor, and solicited or induced him to come by any means whatever, they are within the statute, unless, indeed, he was brought here to engage in a new industry.

"3. The plaintiff is not entitled to recover if the business or employment for which the alien migrated was the manufacture in whole or in part of goods not then manufactured in the United States, and for which competent skilled labor could not then otherwise be obtained."

I have already answered this point. If he was brought here to engage in a new industry, such as I have described, one not then pursued in the United States, and laborers could not be obtained here for that enterprise, then bringing him was not a violation of the act. But it must be a new enterprise; it must not simply be the introduction of greater skill and greater care into an old one. The distinction is very plain, and I could not make it more so by repetition.

"12. If the jury believe from the evidence that the alien in question was brought to the United States to aid in the manufacture in whole or in part of a character of cloth not then manufactured in the United States, and for which competent home labor could not then be obtained, then such act of importation is not within the provisions of the law in question, and your verdict should be for the defendants."

I answer this and 11th as I have answered the preceding point. If he was brought here for the purpose of engaging in a new industry, bringing him does not render the defendants in this cause liable to the penalty. But it is for you to say whether this was a new industry or not, in view of the evidence, and of the instructions of the court, on that subject.

As I have already said, the questions stated are questions of fact, and are submitted to your judgment.

Counsel for defendants excepts to the answer of the court to the first, second, third, and eleventh and twelfth points submitted on behalf of defendants.

Also, to that part of the charge where the court says:

"The defendants are Joseph and John Lees and no other. All else besides these names in the designation of the parties to the suit is merely descriptive. * * * Your verdict here, if it is for the Government, will involve Joseph and John Lees, and nobody else."

Verdict for plaintiff.

In the District Court of the United States for the Eastern District of Pennsylvania.

THE UNITED STATES *vs.* JOSEPH and JOHN S. LEES, Trading as James Lees & Sons.	August Sess., 1888. No. 10.

It is hereby agreed that a judgment for one thousand dollars shall be entered by the court in this case above entitled, subject to the same exceptions and similar to the final judgment to be entered in above-entitled cause No. 9 of August session, 1888. Said judgment to be subject to writ of error or appeal on the record of said case No. 9 as though it was the record in this case.

February 21, 1889.

H. T. FENTON,
For Defendants.
JOHN R. READ.
U. S. Attorney.

And thereupon the counsel for the said defendants did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record:

The said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court, and re-
71 quested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge at the request of the said counsel for the defendants did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 14th day of May, A. D. 1889.

(Signed) WILLIAM BUTLER. [SEAL.]

UNITED STATES *vs.* LEES.	U. S. C. C. August Sess., 1888, No. 9, of District Court.

Assignments of Error.

The plaintiffs in error, Joseph Lees and John Lees, assign the following errors in the proceedings of the court below:

1. The district court erred in overruling defendants' objection to its entertaining jurisdiction of the case; because, by the terms of the statute on which the action is founded, exclusive jurisdiction is vested in the circuit court as respects suits to be brought for penalties imposed by the third section of said statute.

2. The court erred, on the trial, in overruling defendants' objection to the compulsory examination of John Lees on the part of the Government against himself and codefendant.

3. The court erred in charging the jury that, on the face of the record, the suit was against Joseph Lees and John Lees only, and that the description of them as surviving partners of James Lees, deceased, was descriptive only and not material.

4. The court erred, on the trial, in admitting in evidence the written contract of April, 1886, without competent proof of authority on the part of the agent to make the same in the firm name.

5. The court below erred in refusing an unqualified affirmance of defendants' first point, which was as follows: "1. To entitle the plaintiff to recover, it must be satisfactorily proven that the defendants before the migration of the alien expressly authorized or assented to the making of the illegal contract with him by Johnson or Umpleby; proof of subsequent assent is not sufficient."

6. The court below erred in refusing an unqualified affirmance of defendants' second point, which was as follows: "2. To entitle the plaintiff to recover, it must be satisfactorily proven, not only that the alien, previous to his becoming a resident of the United States, entered into a contract to perform labor or service here, and that he actually migrated or entered into the United States in pursuance of such contract, but, also, that the defendants prepaid his transportation or otherwise assisted, encouraged, or solicited his migration,

with knowledge previous to his migration, that he had actually entered into such a contract."

7. The court erred in its charge to the jury in construing the proviso of the act of February 26, 1885, to mean that "a new industry contemplated only a substantially new product and excluded as such an improved product having different characteristics, or a more skillful process of making an old product."

72 8. The court below erred in refusing to affirm defendants' eleventh point, which was as follows: "11. If the jury believe, from the evidence, that the manufacture of fine cheviot cloths was not at the time of the importation of such alien, fully understood nor carried on within the United States, then the importation of said alien for the purpose of manufacturing such goods by the defendants was, in effect, the establishing of a new industry comprised within the proviso of the act under which this suit is brought."

9. The district court erred in overruling defendants' demurrer to the declaration, because the first, second, and third sections of the act of Congress of February 26, 1885, on which the action is founded, are unconstitutional and void.

10. The court erred in refusing to affirm defendants' fourth point, which was as follows: "4. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States in any foreign country, which would not be unlawful if done or made within the jurisdiction of the United States."

11. The court erred in refusing to affirm defendants' fifth point, which was as follows: "5. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States with a citizen or subject of any foreign country which would not be unlawful if done or made with any citizen of the United States."

12. The court erred in refusing to affirm defendants' sixth point, which was as follows: "6. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful private act or contract done or made by any citizen of the United States with a citizen or subject of any foreign country previous to his migration to this

country which would not be unlawful if done or made with such alien after his arrival within the United States."

13. The court erred in refusing to affirm defendants' seventh point, which was as follows: "7. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which have the effect exclusively of a police regulation."

73 14. The court erred in refusing to affirm defendants' eighth point, which was as follows: "8. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful and peaceable occupation or employment of an alien after he shall have become a resident of the United States, or with his otherwise lawful and peaceable object or intention in migrating to the United States, or with any otherwise lawful inducement held out to him to become a resident of the United States."

15. The court erred in refusing to affirm defendants' ninth point, which was as follows: "9. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful any otherwise lawful act of a citizen of the United States relating to his private business or affairs merely because entered into with an alien, resident in a foreign country, and who was then otherwise at liberty to come to the United States."

16. The court erred in refusing to affirm defendants' tenth point, which was as follows: "10. The plaintiff is not entitled to recover, because the act of Congress of February 26, 1885, on which this suit is founded, in so far as it prohibits these defendants from entering into a contract with an alien prior to his migration to this country to perform labor or service therein, is unconstitutional and void, because it is not within the power of Congress to enact any laws which make unlawful such otherwise lawful act of a citizen of the United States, however much such law may be valid, to prohibit the landing of such alien emigrant in any port of the United States."

And the said defendants (plaintiffs in error) therefore pray that the judgment of the said district court may be reversed.

H. T. FENTON,
Attorney for Plaintiffs in Error.

And afterwards, to wit, on the seventeenth day of May, A. D. 1889, a bond of the said defendants, with Sevill Schofield as surety in

twenty-five hundred dollars, being filed, is in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania.

Know all men by these presents, that we, Joseph Lees and John S. Lees, of Bridgeport, in the county of Montgomery, in the State of Pennsylvania, and Sevill Schofield, of Manayunk, Philadelphia, are jointly and severally held and firmly bound unto the
74 United States, in the sum of twenty-five hundred dollars ($2,500), lawful money of the United States of America, to be paid to the said United States, to which payment well and truly to be made, we do bind and oblige ourselves, and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals. Dated this eleventh day of May, A. D. 1889.

Whereas the above-mentioned Joseph Lees and John S. Lees have prosecuted a writ of error to the circuit court of the United States, in and for the eastern district of Pennsylvania, to reverse a judgment rendered against them by the district court of the United States for the district aforesaid, in an action of assumpsit at the suit of the United States, of August sessions, 1888, No. 9.

Now, the condition of this obligation is such that if the above-named Joseph Lees and John S. Lees shall prosecute their said writ of error to effect and answer the amount recovered against them in said district court, and all costs and damages which may be adjudged against them if they shall fail to make good their plea, then this obligation to be void, or else to remain in full force and virtue.

JOSEPH LEES. [SEAL.]
JOHN S. LEES. [SEAL.]
SEVILL SCHOFIELD. [SEAL.]

Taken and acknowledged before me on May 10, 1889, by Joseph Lees and Sevill Schofield, and on May 11, 1889, by John S. Lees.

W. W. CRAIG,
Pro Clerk U. S. D. C.

UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court, in a certain action of summons assumpsit, therein lately depending, wherein The United States of America is the plaintiff, and Joseph Lees and John S. Lees, surviving partners of James Lees, deceased, now or late trading as James Lees & Sons, are the defendants, as full and entire as the same now remain of record in said court.

In testimony whereof I have hereunto subscribed my hand and affixed the seal of the said district court this first day of June, A.

D. 1889, and in the one hundred and thirteenth year of the Independence of the said United States.

W. W. CRAIG,
Pro Clerk.

75 And now, to wit, this 10th day of April, A. D. 1890, this cause came on to be heard and was argued by counsel; and thereupon, upon consideration thereof, it was ordered that the judgment of the district court of the United States for the eastern district of Pennsylvania be, and the same is hereby, affirmed.

Whereupon judgment is entered accordingly.

76 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

JOSEPH LEES *et al.*, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.
} No. 1. October Sess., 1889.

Know all men by these presents that we, Joseph Lees and John S. Lees, of Bridgeport, in the county of Montgomery, in the State of Pennsylvania, and Sevill Schofield, of Manayunk, Philadelphia, *and* jointly and severally held and firmly bound unto the United States of America in the full and just sum of twenty-five hundred dollars, to be paid to the said United States of America, its certain attorney or assigns: to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of April, A. D. 1890.

Whereas lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between Joseph Lees and John S. Lees, plaintiffs in error, and The United States of America, defendant in error, brought to reverse a judgment entered in the district court of the United States in and for the eastern district of Pennsylvania in favor of said United States, defendant in error, judgment was rendered against the said Joseph Lees and John S. Lees; and the said Joseph Lees and John S. Lees having obtained a writ of error to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United
77 States of America, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such that if the said Joseph Lees and John S. Lees shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their

plea good, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH LEES. [SEAL.]
JNO. S. LEES. [SEAL.]
SEVILL SCHOFIELD. [SEAL.]

Sealed and delivered in presence of—
SAMUEL BELL.
W. VON A. WILLIAMSON.

Approved:
W. McKENNAN, *Judge.*

[Endorsed:] No. 1. October sess., 1889. Circuit court United States. Joseph Lees and John S. Lees, plaintiffs in error, *vs.* The United States of America, defendant in error. Bond surwrit of error. Filed Apr. 19, 1890.

78 UNITED STATES OF AMERICA, } *set:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Joseph Lees and John Lees, surviving partners of James Lees, deceased, now or late trading as James Lees and Sons, plaintiffs in error, *vs.* The United States of America, defendant in error, No. 1, October session, 1889, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 29th day of April, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

79 United States Supreme Court.

JOSEPH LEES and JOHN S. LEES, Plaintiffs in Error and Defendants Below,
vs.
THE UNITED STATES OF AMERICA.

And now, on the second Monday of October, 1890, before the justices of said court, come Joseph Lees and John S. Lees, plaintiffs in error, by Hector T. Fenton, their attorney, and say that by the record aforesaid there is error in the various rulings hereinbefore excepted to, and also in the following particulars:

1st. That the district court erred in overruling defendants' objection to its entertaining jurisdiction of the case, because by the terms

of the statute on which the action is founded exclusive jurisdiction is vested in the circuit court as respects suits to be brought for penalties imposed by the third section of said statute.

2nd. The district court erred on the trial in overruling defendants' objection to the compulsory examination of John Lees on the part of the Government against himself and codefendant.

3rd. The court erred in its charge to the jury in construing the proviso of the act of February 26, 1885, to mean that a new industry contemplated only a substantially new product and excluded as such an improved product having different characteristics or a more skillful process of making an old product.

4th. The court erred in its charge to the jury in construing the proviso to the statute to mean that a new industry contemplated anything more than a commercially new product.

5th. The district court erred in overruling defendants' demurrer to the declaration, and afterwards in its charge to the jury refusing defendants' special points, because the first, second, and third sections of the act of Congress of February 26, 1885, on which the action is founded, are unconstitutional and void.

6th. The circuit court erred in affirming said judgment of the district court for the defendant in error and in not reversing said judgment by reason of the errors in said record of the district court appearing.

Wherefore plaintiffs in error pray that the judgments aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, as the same more fully appear therein, may be reversed and annulled.

H. T. FENTON,
Att'y for Plaintiffs in Error.

[Endorsed:] U. S. Supreme Court. Lees *et al.*, pl'ffs in error, *v.* United States. Assignment of errors.

Endorsed on cover: Case No. 14,025. E. Pennsylvania C. C. U. S. No. 98. Joseph Lees and John S. Lees, plaintiffs in error, *vs.* The United States. Filed May 3, 1890.

Office Supreme Court U. S.
FILED.
OCT 30 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

No. 98. October Term, 1893.

JOSEPH LEES, et al.,
Plaintiffs in Error,

vs.

THE UNITED STATES.

Brief for Plaintiffs in Error.

HECTOR T. FENTON,
Counsel for Plaintiffs in Error.

A54

Supreme Court of the United States.

LEES, et al.,
Plaintiffs in Error,
vs.
THE UNITED STATES.

October Term, 1893.
No. 98.

STATEMENT OF THE CASE.

This is a writ of error brought to reverse a judgment of the Circuit Court of the United States for the Eastern District of Pennsylvania, affirming a judgment of the District Court in an action at law brought in that Court by the United States as plaintiff against "Joseph Lees and John Lees, etc., surviving partners of James Lees, deceased, now or late trading as James Lees & Sons," as defendants. The writ and amended statement or narr (see Record, page 13), set forth that the defendants below, on the 7th of May, 1886, were a copartnership, having their place of business at Bridgeport, in the Eastern District of Pennsylvania, and on that date did assist and encourage the migration of a certain alien, Frederick William Graham, from England into the United States, and thence to Bridgeport aforesaid, under a contract made with him prior to his migration, to perform labor for the said defendants at Bridgeport; and that said alien did perform such labor in pursuance of said contract. The said alleged acts of the partnership defendants were averred in the narr to be in violation of the Act of Congress of February 26, 1885, Chapter 104 (23 Stat., 332), imposing upon the importer a penalty of $1000 for such violation of the Act. (See Act printed in

full on pages 28-30 of this brief.) The defendants filed a demurrer (see Record, page 10) denying the jurisdiction of the District Court, on the ground that jurisdiction was vested exclusively in the Circuit Court by the terms of the Act of Congress in question. The demurrer also attacked the narr on the ground that it did not aver that the acts of the defendants were not within the terms of the proviso to said Act exempting from its operation skilled workmen in any new industry not then established in this jurisdiction; also, on other grounds as to which it was afterwards amended; also, upon the ground that the Act in question was unconstitutional, for the reasons therein set forth, in so far as it affected a citizen of the United States assisting in the migration of an alien under a previous contract with him to perform labor in this jurisdiction. The demurrer was overruled and the defendants pleaded. The case was tried before a jury February 20 and 21, 1889, which resulted in a verdict for the United States for the sum of $1000. Upon the trial twelve points were submitted (see Record, pages 65, 66 and 67); upon which the learned District Judge was requested to charge the jury. Nos. 4 to 10 inclusive of said points present the constitutional question mentioned. These points were overruled and exceptions taken. The other five special points, together with the rulings and charge of the Court, and the exceptions thereto, relate to the other matters brought up by this writ of error for review, and are comprehended in the first five assignments of error.

These several matters, upon which the writ of error to the Circuit Court was based, are set forth in the assignments of error returned with that writ (see Record, pages 73 to 75); and the following are the assignments of error returned with the writ of error issued out of this Court (see Record, pages 78 and 79):

ASSIGNMENTS OF ERROR.

1st. The District Court erred in overruling defendants' objection to its entertaining jurisdiction of the case; because by the terms of the statute on which the action is founded, exclusive

jurisdiction is vested in the Circuit Court as respects suits to be brought for penalties imposed by the third section of said statute.

2d. The District Court erred on the trial in overruling defendants' objection to the compulsory examination of John Lees on the part of the Government against himself and co-defendant.

3d. The Court erred in its charge to the jury in construing the proviso of the act of February 26, 1885, to mean that a new industry contemplated only a substantially new product and excluded as such an improved product having different characteristics or a more skillful process of making an old product.

4th. The Court erred in its charge to the jury in construing the proviso to the statute to mean that a new industry contemplated anything more than a commercially new product.

5th. The District Court erred in overruling defendants' demurrer to the declaration, and afterwards in its charge to the jury refusing defendants' special points, because the first, second and third sections of the Act of Congress of February 26, 1885, on which the action is founded, are unconstitutional and void.

6th. The Circuit Court erred in affirming said judgment of the District Court for the defendant in error, and in not reversing said judgment by reason of the errors in said record of the District Court appearing.

POINTS OF ARGUMENT.

This record presents for the consideration of the Court four leading questions of paramount importance: (1) Whether the District Court had any jurisdiction of the subject-matter of the action, it being objected in the trial Court that exclusive juris-

diction thereof is vested in the Circuit Court by the express terms of the Act in question. (2) Whether or not in an action against the person charged with assisting the migration of an alien under contract, etc., to recover against such person the penalty imposed by Section 3 of this Act, he can be called by the Government as a witness to testify against himself to matters material to the issue. (3) Whether the proviso to the law excluding from its operation "any new industry not at present established in the United States" should be construed to include only the manufacture of a generically new product, or may include a process or product of analogous character as the old, but so improved by the skill of the workman or otherwise as to possess decided commercial novelty in the elements of quality, characteristics and intrinsic value. (4) The constitutionality of Section 3 of the Act as respects the imposition of a penalty upon a citizen or other person knowingly assisting or encouraging the migration of the alien who has previously contracted for his services here, or of making such contract with him previous to his migration to the United States.

The exceptions taken on the trial also specify other rulings, which are believed to be erroneous, viz.: That by the language of the writ and pleadings the suit was against the firm, as it existed at the time of the alleged offense, and the right of action having abated by the death of one of them before suit brought (the action being to recover a penalty), the suit could not be maintained in the form in which it was brought, nor any valid verdict and judgment entered therein. Also, that the Court erred in admitting in evidence the written contract set up in the narr, and the letter of one of the defendants, without any sufficient proof or any proof of authority given by defendants to make or write the same, but upon evidence of implied *subsequent* assent, as set forth in the first special request for instructions to the jury (see Record, page 65), wholly disregarding the legal distinction between *implied* authority of a partner to do a *lawful* act, and the necessity for *previous express* authority to do an *unlawful* one.

These several questions will be considered in their proper order.

1. As to the Jurisdiction of the District Court.

It was objected in the Court below that it had no jurisdiction of the subject-matter of this action, but that the same was vested in the Circuit Court exclusively. Much difference of opinion has existed on this question. So far as known, this was the fourth case brought under this Act for the recovery of a penalty against the importer, and the only one to that time in which the action was brought in the District Court. The other three, all of which preceded this, were instituted in the Circuit Court, two of them in the Southern District of New York, and the other in the District of Michigan. If practice and precedent have any weight as authority, these cases are guide-posts to a determination of this question. It is quite true that by Section Rev. Stat. 563, sub. div. 3 and 4, the District Court has jurisdiction of suits for penalties and forfeitures, and actions at law brought by the United States, its officers, etc., under any law of the United States. But it is equally true that the Circuit Court has concurrent, and in some cases, exclusive jurisdiction, in criminal prosecutions; cases in which the United States are plaintiffs; cases arising under the Constitution and Laws of the United States; and in certain cases to recover penalties and forfeitures. At most, therefore, the jurisdiction of the District Court, if it has any, is concurrent only. But that of the Circuit Court is exclusive, if so made by the statute in question on which this action is founded. There can be no doubt that Congress may not only prescribe uniform laws on any particular subject, but may exceptionally commit the execution of them to such Federal Courts as it may see fit. This subject was fully discussed in the Pacific Railroad cases, and settled to that effect by this Court in U. S. *vs.* R. R. Co., 98 U. S., 569. Since then, the Circuit Court for the Eastern District of Missouri, in Taft *vs.* Stephens, 37 Fed. Rep., 726, in a *qui tam* action brought to recover a certain penalty under the copyright laws, held, on a plea to the

jurisdiction of the Circuit Court, that while it was true that the District Court had jurisdiction under Section 563, Rev. Stat., of actions to recover penalties and forfeitures in general, the Congress, by Section 629, clause 9, Rev. Stat., had committed to the Circuit Court exclusively all controversies arising under the copyright laws, which was inclusive not only of actions or proceedings in equity for infringements, etc., but of *qui tam* actions for penalties and forfeitures imposed by said laws.

It is, therefore, in order to consider whether or not the language of the statute, on which this action is founded, confers exclusive jurisdiction on the Circuit Court. Its language is, "shall forfeit and pay for every such offense the sum of one "thousand dollars, which may be sued for and recovered by the "United States, or by any person who shall first bring his action "therefor, including any such alien or foreigner who may be a "party to such contract or agreement, as debts of like amount are "now recovered in the Circuit Courts of the United States." It is to be noted that this Act was passed in 1885, at which time the jurisdictional minimum limit of the Circuit Court, in ordinary civil actions, and which did not include those brought by the United States as a party, was five hundred dollars. This jurisdictional limit was increased by the subsequent Act of 1887 to two thousand dollars. It was said on behalf of the Government that this Act of 1887 limits the jurisdiction of the Circuit Courts, in suits of a civil nature, and which it was said included the case at bar, to cases in which the amount in dispute exceeds the sum or value of two thousand dollars, and therefore the Circuit Court had no jurisdiction, this being a case to recover a lesser amount; but it will be seen, on reference to the Federal Judiciary Act of March 3, 1887, that the amount in controversy does not determine the jurisdiction of the Circuit Court in cases where the action is founded on a statute or law of the United States, or where the United States, or any officer thereof in his official capacity, is the party plaintiff. The Act of 1887, increasing the jurisdictional amount, applies only in that respect to actions of a civil nature, where the jurisdiction of the Federal

Court is, or may be, concurrent with that of the State Courts. Authority for this proposition will be found in Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209, in which the express point is ruled in an opinion by Judge Blodgett. In construing the statute in question, on which this action is founded, we may therefore treat as surplusage the words "as debts of like amount," because the action being brought by the United States, under a statute of the United States, the Circuit Court has jurisdiction irrespective of the amount; but if those words are to be taken to indicate the forum in which the action is to be brought, then, at the time of the passage of the Act in question, the Circuit Court had jurisdiction of cases involving that amount.

But the District Court also had concurrent jurisdiction, as respects amount, and this fact is to be considered in giving force and effect to the words of the law in question, viz.: "in the Circuit Court of the United States." It cannot be presumed that the Congress used these last quoted words inadvertently and without any meaning; but that, as irrespective of those words, the District Court would have had, if not exclusive, at least concurrent jurisdiction, it was intended by the use of that language to confer exclusive jurisdiction, under this section of the Act in question, on the Circuit Courts; precisely as it had previously done in committing the execution of certain other special statutes to either the District or Circuit Court, as in its discretion it saw proper. U. S. *vs.* R. R. Co., 98 U. S. Rep., 569, *supra*. It is a fact of some importance, in determining this question, that all other actions under this section of the statute in question, anterior to that of the case at bar, so far as known, were brought in the Circuit and not in the District Courts.

But in 1891, and since the case at bar was decided in the Court below, an action was brought on this statute in the District Court for the District of Connecticut, and the same question of jurisdiction of the District Court arose, the case being reported as United States *vs.* Whitcomb, 45 Fed. Rep., 89; wherein Judge Shipman held that while the Circuit Court undoubtedly had jurisdiction by force of the words of the

statute itself, he did not think the language thereof was sufficiently positive in character to oust the general jurisdiction of the District Court in cases for recovery of penalties and forfeitures conferred by the previously enacted general law contained in the ninth section of the Judiciary Act of 1789 ; but this decision overlooks the fact that here, as in the shipping Acts, the copyright laws, and others of like character, *exclusive* jurisdiction was intended by the several statutes to be conferred upon the Circuit Courts, on the principle that Congress has power, which it has often exercised, of committing to either or any inferior Federal Court in its discretion the enforcement of any particular statute ; and that under such circumstances general laws regulating the jurisdiction of the several Courts have no place or effect.

2. Error in the form of the action ; also as to the admission in evidence of the contract and of Mr. Lees' letter.

It was contended on the trial that the suit on the face of the record was a suit against the partnership of James Lees & Sons, and was intended so to be by the phraseology used by the Government and its attorney in the issue of the summons and the drafting of the pleadings. The Statute under which the suit is brought expressly authorizes the action against the party, *partnership* or corporation who shall violate its provisions. Now the partnership, as appeared on the trial, consisted, at the time of the alleged commission of the offense in question of James Lees (who died afterwards and before the suit was brought) and the two present surviving defendants. It cannot be said that the Government intended by the phraseology used in the pleadings to sue John Lees and Joseph Lees only, but to sue the firm of James Lees & Sons, as it existed at the time of the alleged commission of the offense in question. It was therefore for the Government to direct its testimony to prove an illegal contract, not by the present surviving members of the firm, but by the partnership of James Lees & Sons in its partnership capacity, and there can be no doubt upon the face of the record that the judg-

ment entered binds not only the interest of John Lees and Joseph Lees in the partnership property, but also that of the deceased partner. It is hardly worth while to consider whether the Court could properly have directed a verdict against the two surviving partners as individuals, where the suit was against them and their deceased partner as a firm, because no such ruling was asked for by the Government, and if it had been, the decision in Schreiber *vs.* Sharpless, 6 Fed. Rep., 175–179, contains contrary ruling upon a similar point. This objection is not a formal objection only, but a material one, because the action, being for a penalty, abated by the death of James Lees as against him. (See Schreiber *vs.* Sharpless, 17 Fed. Rep., 589; affirmed in *ex parte* Schreiber, 110 U. S., 76.) It was on this ground therefore that the defendants below excepted to that part of the charge in which the Court says, "The defendants are Joseph and John Lees, and no other; all else besides these names in the designation of the parties to the suit is merely descriptive. Your verdict here, if it is for the Government, will involve Joseph Lees and John Lees; nobody else."

The Government, to the time when it put John Lees on the stand as its witness, had wholly failed to show that either the partnership defendants or any of its members had either made a contract with the alien in question or assisted in his immigration. The effort of the Government was to prove the written contract, which on its face was made by one Johnson in the name of the firm of James Lees & Sons, but Johnson was not called as a witness; and to prove the authority of Johnson to make the contract in the firm name, the evidence was very meagre and wholly insufficient. John Lees denied that he had given any authority to Johnson to make a written contract, admitting, however, that before the men embarked for the United States, he, in substance, assented to its terms. He admitted also that he went over to Europe to see what he could do in the way of getting men to manufacture in this country a grade of goods equal in quality, and substantially similar to, and having the characteristics of, genuine Scotch cheviot cloths, a kind of goods not then

manufactured in this country. And he admitted that the firm had assented to and authorized him in this behalf. Now, this was all the evidence upon that point in the Government's *prima facie* case, and if the action had been a civil action on contract, there is no doubt that John Lees, as a partner, could properly have been said to have had implied power to bind the firm. So far as there was any evidence on the trial, John Lees was not authorized by the firm to make any *illegal* contract or do any *unlawful* thing, and the Government's contentions, sustained by the substantial refusal of defendants' first special point (see Record, page 71), that the general or implied power of a partner to make a contract, such as this in question, was sufficient, it is an error. The precise point was ruled in Schreiber *vs.* Sharpless, 6 Fed. Rep., 175, in which it is recognized that the doctrines of principal and agent, which prevail in civil transactions, are inapplicable in suits to recover penalties imposed by statute. There was nothing inconsistent with this statute in the authorization of John Lees by the firm to go abroad and procure workmen. The charge of the Court in answer to said first special point was substantially a refusal of it, and misled the jury in practically not presenting the real question at all. The statute does not make the mere bringing of workmen to this country illegal. It is making a contract with them prior to their landing upon the United States soil, to perform labor or service here, that is illegal and prohibited by the statute in question. It is on these grounds that the admission of the written contract in evidence was objected to on the trial, and the force of the objection is practically admitted by the remarks of the trial judge in answer to the objection on page 25 of the printed Record, the Court subsequently admitting the paper with the following remark : " It may be followed up by evidence, if it is necessary, and if the Government has it, that John S. Lees was the executive agent of the firm of James Lees & Sons " (see Record, page 32, folio 34). There was no such evidence offered, and therefore it was that the defendants below again presented the question in the first and second special points (see Record,

page 65), and excepted to that part of the charge of the Court already quoted (see Record, pages 32 and 72). The same remarks will apply to the admission of the letter in evidence (see Record, page 25).

It is earnestly urged that the Government's case was fatally defective in not showing *previous* authority from the other partners to John Lees to do the alleged illegal act. The *implied* authority of a partner to make contracts for the firm in the line of its business has no application to the making of a contract contrary to law and prohibited by a penal statute. Unquestionably the evidence extracted from John Lees under compulsion was sufficient to show that he had authority from the firm to go abroad and see what he could do in the way of getting workmen skilled in the manufacture of a particular kind of fabric not then made here, and which the firm desired to begin the manufacture of in this country; which was a perfectly lawful and laudable thing for the firm to do, and which is expressly permitted by the proviso to the enactment in question.

The illegality of the alleged act was not in soliciting the men to come to this country (which was all that the evidence showed that he was authorized to do), but in making a contract binding the firm to employ the men after they should have arrived in this country. Had he merely solicited them to come to this country, or even paid their passage money upon a promise to give them work after getting here, such act would not have been within the terms of the statute, and the evidence fell very far short of showing even that. Now, there was not a scintilla of evidence to show authority from the other members of the firm to John Lees to make any written contract or to do any act which constituted just the difference between a legal and an illegal importation of laborers under this statute.

3. What constitutes a "new industry" within the meaning of the proviso to this statute.

The proviso contained in the fifth section of the Act of February 26, 1885, on which this action is founded, contains

these words: "Nor shall this Act be so construed as to prevent "any person or persons, partnership or corporation, from engag- "ing, under contract or agreement, skilled workmen in foreign "countries, to perform labor in the United States in or upon any "new industry not at present established in the United States, "provided that skilled labor for that purpose cannot be otherwise "obtained."

It was in evidence in the cause that the cloth known as Scotch cheviot was not at that time (and, indeed, is not now) made in the United States, although there was at that time made an imitation thereof, and called cheviot; but all the witnesses testified that it was easily distinguishable from the genuine; that it was worth from forty to fifty per cent. less in market value; that it differed therefrom in its leading characteristics, viz.: color and finish. In short, it was a wholly different thing from the imported Scotch cheviots, and not possible to be confounded with them, and certainly not in point of fact the same as them. The defendants below presented their view of what was a new industry, in the third, eleventh, and twelfth special points (see Record, pages 65 and 67), which the Court refused to affirm, and commented on at length in the charge on pages 70 and 71 of the Record. Previous to the submission of the case to the jury, upon the arguments of counsel, the Court elaborated this point in discussing the question with counsel openly and in the hearing of the jury (see pages 64 and 65 of Record.) The trial Court construed the proviso liberally in favor of the Government, and not strictly as it should have been construed, being a penal statute. The trial Court applied to it almost as strict a rule as would have been applied to a case of infringement of a patent, the learned Judge illustrating his views, as stated on page 65 of the Record, in the following words: "What is meant by the introduction of a new industry is pre- "cisely what the terms of the statute express, a new industry, "and not an old industry, improved by a greater amount of "skill. If, when they commenced manufacturing steel rails in "Great Britain, when we were manufacturing iron rails only

"here, and the manufacturer, desiring to produce steel rails had "gone to England and employed labor skilled in the manu- "facture of steel rails with a view of establishing it here, and "brought competent laborers here and applied them to that "industry, that would have been a new industry within the "terms of the statute. If, on the other hand, the object was "to manufacture a better article of iron rails than we had "manufactured before, manufacturing them in the same way, "but by the application of a higher degree of skill—men of "greater experience—I should say to the jury, that is not the "meaning of the statute."

Now, such a ruling would require that the words "new industry" should mean the production of a generically novel home product. The statute does not mean any such thing. It is answered fully, if the product made by the imported laborers was so far different in its characteristics, quality and value that, as compared with any product then made in this country, it could not be properly substituted for it in a *commercial* sense. The statute does not mean goods of a new genus, but is answered by a new species of goods of the same genus. It was in evidence in the cause, and uncontradicted, that in 1886 cheviot cloths having the peculiar characteristics of color and finish of the imported goods were not made in this country, and that these characteristics affected the quality of the goods, its appearance, and its intrinsic as well as its commercial value. It could not be said that the imported goods were a *mere* improvement upon the so-called cheviots of domestic manufacture. If their intrinsic characteristics differed, they were not *improved*, but *different* goods. The jury was misled, it is thought, by the language of the trial Judge, in stating that *cheviots* were well known and made in this country prior to 1886, when, in point of fact, real cheviots were not made here, but merely a character of goods in imitation of the genuine cheviots, and differing from them in distinguishing characteristics to such an extent as to be easily distinguishable therefrom, and, in point of fact, not the same kind of goods. There was more than a difference in degree, which

would constitute what would be technically known as an improvement; differing to such an extent as to make it a wholly different thing, not only in kind and quality, but in value and classification; in other words, a *commercially new* product, which is what is meant in the proviso to the statute in question. The trial Court's interpretation of the statute was harsh and illiberal, and contrary to its true intent and meaning, which is the controlling factor in construing it. The object and intent of the law is to prevent the influx into this country of cheap foreign labor, which has the effect to degrade American labor and reduce it to the level of the assisted emigrant. It was not the object and intent of this law to prevent the previous employment and subsequent emigration to this country of highly skilled workmen at high rates of wages, who came with the avowed purpose, on their part and that of their employer, of making an effort to establish here the manufacture of a grade of cheviots equal to foreign goods of that class. The evidence at the trial was so clear as to the probity of purpose on the part of the plaintiffs in error in bringing the workmen in question to this country that the trial Judge commented favorably upon it (see Record, page 69). Briefly stated, the evidence was (see Record, pages 36 to 40, and page 46) that real cheviot was not made here; that it was a very desirable quality and character of goods; that they thought money might be made by its manufacture here; that they decided to try to make it; that they advertised extensively for skilled workmen for that purpose; that no replies were received; that they then decided to send John Lees to England to examine into the subject and see what he could do in the way of getting skilled workmen for the purpose; that the chief differences between the genuine imported cheviot and the home product was not so much in the wool as in the coloring and finishing of the goods; that they then engaged skilled dyers and finishers, and imported some finishing machinery. The workman in question in the case at bar was one of the dyers, and the Record shows that he was paid a higher rate of wages than American dyers.

It is declared judicial interpretation of this statute, both on Circuit (U. S. *vs.* Craig, 28 Fed. Rep., 798) and by this Court (Holy Trinity Church *vs.* U. S., 143 U. S., 463) that the intent of its framers was to prevent the influx of alien pauper labor, brought here under contract, whereby the labor of the alien was pledged in advance of his migration, and at a very low rate of wages, the effect of which was to break down the home labor market and reduce the American laborer engaged in like occupation to the level of the assisted emigrant. We are aided very considerably by this judicial interpretation of the object of the statute in determining what is meant by a "new industry" excluded from its operation by the proviso.

Obviously, it is of no importance, in deciding this question, to determine whether the goods in question are the same in kind as the American goods of the same name, in the broad sense, but whether or not they are *commercially* the same. This must necessarily be the test, because whether they be of the same species, as well as of the same genus, and the imported goods be different from the home product, only in the sense of *improved* being manufactures in consequence of special or greater skill of the workmen, the result is still the same, that they are *different* goods *commercially;* that one does not take the place of the other, as respects either the mill owner, the workman, or the public. The language of the trial Judge on this point, heretofore quoted from page 65 of Record, as well as in the refusal of defendant's points, expressed directly the contrary view, and, it is earnestly urged, is erroneous in principle, in that the jury was instructed that generically intrinsic differences, and not commercial differences, governed in determining whether or not the manufacture of genuine cheviots was, as compared with the then different home product, a new industry within the meaning of the statute. The fact that no American workman, skilled in the production of the genuine goods (which required special knowledge and skill in the dyeing and finishing), came forward in answer to the extensive advertisements for them by the defendants, who were thus forced to procure such workmen from abroad, is persuasive, if not con-

clusive, evidence, that the *results* of the labors of such workmen must necessarily be something not made at home ; in other words, a new product, within the meaning of the proviso to this statute. The migration and employment of this workman did not degrade American laborers, "in the same occupation," because there were none so occupied ; nor reduce their wages, because he was paid higher wages than American dyers on the home grade of goods. The effect of the migration and employment of this workman, if it had any effect on the general public, was beneficial, and tended to enlighten other workmen in the same general occupation, who might profit by observing his skillful methods. Manifestly, this was not the kind of labor that this law intended should be excluded from the country.

4. Error in overruling the objection to the compulsory examination of John Lees.

It cannot be denied that, without the evidence of John Lees, the plaintiff's *prima facie* case was not made out, and the Court would have been obliged to have taken the case from the jury. (See Record, page 25.) The Government thereupon called John Lees as a witness in its behalf, to which objection was immediately made on the ground that he was privileged from a compulsory examination against himself and codefendants. This objection was overruled by the trial Judge, although he had said not ten minutes previously that this case was in the nature of a criminal prosecution (see Record, page 25). The fifth amendment to the Federal Constitution provides that "no person shall be compelled, in any criminal case to be a witness against himself." In pursuance of this constitutional provision, there are three Federal statutes, viz.: Sections 858 and 860 of Rev. Stat. and Act of March 16, 1878, Sup. to Rev. Stat., page 312. The latter Act reads as follows: "In the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors in the United States courts, territorial courts, court martials, and courts

of inquiry in any state or territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him." If the practice of the Circuit Court is to be assimilated to that of the Courts of the State in which the U. S. Court is held, then it will be pertinent to call attention to the Act of Assembly of Pennsylvania of April 3, 1872, Purdon's Digest, page 625, which is in substantially the same words as the Federal statute of March 16, 1878. Irrespective of these statutes, it would be contrary to all precedent, and a violation of one of the most familiar rules of common law, to require a witness to furnish evidence to convict himself of a crime or subject himself to a penalty or forfeiture (1 Greenleaf Ev., Sect. 452.) And courts of equity, when sifting the conscience of a defendant by a discovery, never require him to disclose facts that would subject him to a penalty. Daniell's Ch., 626; Story's Eq. Pl., Sect. 575. The above quoted Section 860 of Rev. Stat. is referred to and construed in an opinion by Judge Wallace, of New York, in Johnson *vs.* Donaldson, 3 Fed. Rep., 22, which was an action brought against defendant for publishing and selling copies of the plaintiff's copyrighted picture, and asking judgment for the penalties and for the forfeiture of the plates on which the chromos were copied, pursuant to Section 4965 of Rev. Stat. of U. S. Upon the trial the plaintiff attempted, by a subpœna *duces tecum*, to compel the defendant to produce his books of account and infringing pictures, to be used as evidence for the plaintiff, but the Court ruled, quoting above Section 860, Rev. Stat., that, as the action was for penalties and a forfeiture, the defendant could not be compelled to furnish evidence against himself. That case cannot be distinguished from this. Also, in proceedings in chancery, where a discovery sought for would subject the defendant to a penalty or forfeiture, a demurrer to the bill will be sustained. This is too well settled to need discussion. Authority for it, however, will be found in U. S. *vs.* Saline Bank, 1st Peters, 100, and Chapman *vs.* Ferry, 12 Fed. Rep., 693.

In the recent case of State *vs.* Railroad Company, decided January 22, 1889, 37 Fed. Rep., 497, this question is very fully considered in an exhaustive and learned opinion by Mr. Justice Brewer. The case was brought for violation of a statute of Iowa, which imposed a pecuniary penalty on railroad corporations guilty of extortion, to be recovered in a civil action by ordinary proceedings instituted in the name of the State, and the question arose whether it was a civil or a criminal action. It was held to be the latter. The learned Judge in that opinion, after stating the rule for distinguishing between cases which are civil and those which are criminal, and the reason of the rule, concludes by referring to the opinion of Mr. Justice Bradley in case of Boyd *vs.* U. S., 116 U. S., 616. This latter case covers the whole ground, and is decisive of this question. This Court there said: "We are clearly of opinion that proceedings instituted for the purpose of declaring a forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal. Suits for penalties and forfeitures incurred by the commission of offenses against the law are of this quasi criminal nature; and we think that they are within the reason of criminal proceedings for all the purposes of the fourth amendment of the Constitution, and of that portion of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself." The Court was careful to state that, in determining whether a suit is civil or criminal, we are not to be guided entirely by the form of the action, but are to determine that question by the nature and purpose of the proceeding. Mr. Justice Brewer makes the same remark in the earlier case cited, founding his judgment in part upon Ames *vs.* Kansas, 111 U. S., 460; and he concludes by stating that if it be said that many Courts have held that a civil action may be brought to recover a penalty or forfeiture, it must also be observed that thereby only the form of the action is determined, but not its purpose or nature; and that it is the nature of the right asserted which furnishes the true test as to whether a proceeding is of a civil or of a criminal nature.

It is unnecessary to further elaborate, as the identical question here involved has been determined by the two Circuit Court decisions above cited, Johnson *vs.* Donaldson, 3 Fed. Rep., 22, and State *vs.* R. R. Co., 37 Fed. Rep., 497, and by the Supreme Court of the United States, in U. S. *vs.* Boyd, 116 U. S., 616; and requires that the verdict and judgment in this case should be set aside.

The foregoing views were presented to the trial Court on the motion for a new trial; and, as counsel understands, the Circuit Court on writ of error, did not entertain contrary views on the general principle stated, but was of opinion that the statute was in the nature of a permissive statute, and that the action was therefore for a debt, and not for a penalty or forfeiture, as construed generally. It is respectfully contended that this view is entirely erroneous, and that no argument is needed to prove it so beyond the language of the statute itself (which is aimed primarily against the alien to keep him from landing), and the discussion of the general question found in State *vs.* R. R. Co., 37 Fed. Rep., 497, and U. S. *vs.* Boyd, 116 U. S. Rep., 616. As remarked in both of those cases, it is not the phraseology of the statute, nor the form of the action or proceeding, that we are to look to, to determine whether or not, it is of a quasi criminal nature; but these both the trial Court and the Circuit Court permitted themselves to be guided by solely, in reaching the erroneous conclusion complained of.

It is a definition that admits of no qualifying exception that an action is "civil" which is brought to redress a private wrong or enforce a private right; and it is "criminal" when brought to punish a public offense, or to recover a penalty imposed by statute for the commission of an offense (whether public or private) made unlawful by statute. And the *form* of the action may be criminal in the former (as by *quo warranto*, for instance), and civil in the latter, as by action of debt, for instance. The decision in Ames *vs.* Kansas, 111 U. S., 460, was distinctly to the effect that the *nature* of the right asserted and at issue, furnished the test whether a proceeding was of a civil or a criminal nature. The *form* of the proceeding was immaterial.

The decision of this Court in Wilson *vs.* U. S., 149 U. S., 60, is germane to the subject, as showing with what jealous care this Court will guard the rights and liberties of the citizen. See also Counselman *vs.* Hitchcock, 142 U. S., 547, construing Sec. 860, Rec. Stat., and the fifth amendment to the Constitution, on which it is founded, and ruling that the constitutional protection is not limited to cases against the party himself, who is called as a witness. In this case is reviewed the various adjudged cases in the State and Federal Courts on the subject; and particularly is Boyd *vs.* U. S., *supra*, fully affirmed. As that case rules, also, that a proceeding, *civil* in form, for the recovery of a *penalty* or forfeiture, is within the meaning of the statute and amendment of the Constitution in question, it is conclusive of this question involved in the case at bar.

5. Constitutionality of the Act of February 26, 1885, as respects the provisions of the first, second, and third sections thereof.

The ninth to the sixteenth specifications of error, brought up by writ of error to the Circuit Court, and embodied in the fifth and sixth assignments of error in this Court, present the constitutional question involved. At the outstart it may be well to state that no question is made of the power of Congress to enact the provisions of the fourth and fifth sections of the statute under consideration; as they relate solely to the admission of aliens into this country, because apart from the inherent power of every sovereignty to determine who shall and who shall not come within its borders, the power of Congress under Article I., Section 8, to regulate commerce with foreign nations, provides ample warrant for these two sections of the enactment in question. The objection to the law is confined to the first three sections. There can be no doubt that a statute may be constitutional in part, and void as to the residue. Presser *vs.* Illinois, 116 U. S., 252. As the Government of the United States is one of delegated powers only, some warrant must be found within its Constitution for every valid statute enacted by Congress,

otherwise it is *ultra vires* and void. Pac. Ins. Co. *vs.* Soule, 7 Wallace, 444. No part of the Federal Constitution has even the most remote relation to the subject-matter under consideration, except, perhaps, Article I., Section 8, which provides that Congress shall have power to regulate commerce with foreign nations, etc. It is well understood that commerce means intercourse, and includes persons as well as things, but it is equally well understood that under the guise of statutes purporting to regulate commerce, Congress may not pass any statute which is the exercise of a police power exclusively, and not incident to the exercise of some right which it may lawfully have. The said sections of the statute under consideration do not, irrespective of the performance of labor in this country by an alien, prohibit the prepayment of the passage money for such alien, or the assisting him in that respect to come to this country. It is perfectly proper and lawful, under existing statutes, for any alien, not a pauper, convict, or of any other inhibited class, to come to this country, and to be assisted by any American citizen to that end, and to be employed by such American citizen after his migration and arrival here. The said sections of the statute in question only operate against the citizen who shall assist an alien to migrate who has made a *previous* contract to perform labor or service within this jurisdiction. The assistance to the alien to migrate is not unlawful; the making of a contract with him previous to migration is not unlawful, but the conjunction of the two circumstances in the same person is the thing prohibited. The alien may be assisted to migrate if no contract is made with him until after he lands, and he may be contracted with previous to migration, if no assistance is given him to enable him to migrate. The two acts being separable and distinct, it may be admitted that Congress may lawfully prohibit the migration of aliens to this country under any and all kinds of special circumstances and conditions, but this can only lawfully operate against the *alien*. The Constitution confers no power to declare the status of persons. The power ceases when they arrive. Lemmon *vs.* The People, 20 N. Y., 607; 26 Barb.,

270. Again, it must be conceded that, as respects the importer, the offense under the statute is not complete until the alien, after his arrival, proceeds to perform labor or service, under and in pursuance of the previous contract. This is the gravamen of the offense. It is the private contractual relation of the parties, as respects the importer, that these sections of the statute operate upon.

It is difficult to see any warrant in the Constitution for the interference by Congress with the otherwise lawful private business relations of a citizen of the United States with an alien who was *otherwise* lawfully entitled to come to the United States, in and about the conduct of business not otherwise prohibited, and which would be perfectly proper and lawful if made *after* the landing of the emigrant instead of prior to his migration. If the contract and the assistance to migrate were necessarily inseparable circumstances to produce a single result, then it might very well be thought that the express power to regulate the latter was incident to an implied power to control the former; but such is not the case, as will be seen on reflection.

In considering State Constitutions, we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. Cooley on Const. Lim., 47. With respect to the personal rights of the citizen, for instance, no bill of rights was inserted in the Federal Constitution, among its provisions, because the Government of the United States, being one of enumerated powers only, and there being nothing contained in its Constitution to authorize it to deprive the citizen of any fundamental rights of person and property, it was unnecessary to insert negative clauses in that instrument inhibiting the Government from assuming any such powers, since the mere failure to confer them would leave all such powers beyond the sphere of its constitutional authority.

In the Head Money Cases, 18th Fed. Rep., 135, the Federal Statute of August 3, 1882 (22 Stat. at Large, Chap. 376, page

214), entitled "An Act to regulate immigration" was discussed and held valid in an opinion by Justice Blatchford, affirmed in 112 U. S. Several of the sections of that Act are somewhat similar to the Act of 1887, which is supplemental to the Statute involved in the case at bar. The opinion in that case refers to the leading case on the subject; Henderson *vs.* Mayor, 92 U. S., 259, and People *vs.* Comp. Gen. Trans., 107 U. S., 59. In Henderson's case the validity of a State statute was in question and it was overthrown. So also in the case of 107 U. S., 59, but the reasons advanced by Justice Blatchford in the Head Money Cases, for sustaining the validity of the Immigration Act of August 3, 1882, have not the slightest application to the Statute involved in the case at bar. The decision in New York *vs.* Miln, 11 Peters, 102, is directly in point, in that the case turned upon whether a statute of New York regulating immigration, and intended to prevent the landing of convicts and paupers in the port of New York and of their then becoming a charge on the State, was an exercise of police power lawfully belonging to the State, or was an attempt to regulate commerce with foreign nations. The object and intent of that law was to a certain extent identical with that involved in the case at bar. The majority opinion of the Court took the former view and held it to be a mere police regulation, fully affirming Gibbons *vs.* Ogden, 9 Wheaton, 195, on that point, and that the law in question was in no sense a regulation of commerce with foreign nations, in that it did not operate on the person of the emigrant until after he had ceased to be a passenger, and had landed and become a resident of the State of New York and amenable to its laws. Its operation only began where the laws of Congress ended. See page 138 of opinion, 11 Peters.

This case was followed by Passenger Cases, 7 Howard, 283, in which the validity of the statute of New York passed in 1830 was in question. That law followed the immigration law involved in the case of New York *vs.* Miln, and for the first time imposed a tax on immigrants. It was held void as conflicting with the right of Congress to regulate commerce with foreign na-

tions. This law was followed in turn by the statute of New York of 1849, which was a compound of the two previous laws, requiring either a bond against the immigrant becoming a charge on the State, or in the alternative a payment of a commutation tax on such immigrant passenger. The validity of this law was considered in Henderson *vs.* Mayor of New York, 92 U. S., 259. The statute was overthrown; and while the language of the opinion is exceedingly broad, there is nothing in it in conflict with the opinion in New York *vs.* Miln, in so far as that case affects the question involved in the case at bar. As an illustration of police powers *not* incidentally delegated to the Federal Government, see United States *vs.* Dewitt, 9 Wallace, 41.

As remarked in Henderson *vs.* Mayor of New York, 92 U. S., 268, and Chy Lung *vs.* Freeman, Id. 279, in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and its constitutionality tested by its object and purpose as thus ascertained.

Looking, therefore, to the Act of 1885, to ascertain its object and purpose, and its natural and reasonable effect, it is very plain that the intention of the law was to exclude *pauper* labor, or, in other words, to prohibit and make unlawful the prepayment of the passage money of any alien laborer who is unable or too poor to pay his own, and who has in consequence been obliged to pledge his services in advance of his migration, and necessarily at a rate of wages which tends by cheap competition to affect, reduce and degrade the wages of American laborers.

There is nothing in the Act which prohibits any person from employing the *same* alien laborer after he arrives in this country, if he came voluntarily and without assistance or encouragement, either monetary or by way of contract of employment, and after such arrival contracting to employ him on any basis of wages or compensation that may be agreeable to him and acceptable to both. There is nothing in the first three sections of the Act of 1885 which operates against the citizen, except to make unlawful any contract entered into by him with an alien laborer previous to his migration to this country, and to punish him for mak-

ing such a contract, but manifestly the Act cannot operate to warrant the infliction of the penalty, unless the Government's officers are derelict in permitting the prohibited contract immigrant to land, and not even then unless he performs labor in pursuance of the contract, which may be at any indefinite length of time after his arrival and landing.

While it was undoubtedly the intention of the framers of the law of 1885 to prohibit the landing of alien laborers who migrated from abroad in pursuance of a contract to perform labor or service here, it will be observed that the statute does not in terms declare the immigration to be unlawful, but indirectly accomplishes the object by imposing a penalty upon the master or captain of any ship who shall bring or land such aliens. This defect in the Act of 1885 was remedied by the supplemental Act of February 23, 1887, Chap. 220 (24 Stat. 414). The present action is founded on the Act of 1885 only.

It is unnecessary to discuss Section 4 of the Act of 1885, which relates exclusively to the master or captain of any vessel bringing such laborer to this country. We have only to do with the question of the validity of the law of 1885, in so far as it affects the citizen employer who enters into such contract with the alien laborer and, incidentally, of the alien himself. The question is therefore narrowed to the first three sections of the Act of 1885. As the intention of the framers of the law was, as stated, to prevent the influx of pauper labor into this country, its purpose must necessarily have been to prevent, by such means, ruinous competition by labor of that kind with the better paid classes of American laborers performing similar work. This is the object, purpose, and effect of the law, as stated by the learned Judge who decided United States *vs.* Craig, 28 Fed. Rep., 798, as follows: "The effect of this was to break down the labor "market, and to reduce other laborers engaged in like occupation "to the level of the assisted emigrant. The design of the Act "was to raise the standard of foreign immigrants, and to dis- "countenance the migration of those who had not sufficient "means in their own hands or of those of their friends to pay "their passage."

In considering the constitutionality or validity of any law, we must not consider it as applied only to a very limited class or one of the classes affected by it, as in U. S. *vs.* Craig, but we must look at its full scope, meaning, and extent, as done by Judge Wallace in the minister's case, and having so done, then, as stated by the Supreme Court of the United States, we must determine therefrom not only its object and purpose, but its natural and reasonable effect. Very careful consideration has been given to the decision of the learned Judge in United States *vs.* Craig, which sustains the constitutionality of this law of 1885. It is quite evident, however from the opinion, that the question of the validity of the law was not considered in view of the reason set forth in the eleventh clause of demurrer in the case at bar, and only generally as respects the matter of the sixth and twelfth clauses of the demurrer. The learned Judge, on page 798, remarked that this Act in question did not materially differ from the Chinese Exclusion Act; but he was entirely in error (it is thought) upon the vital point of difference between the two laws. The Chinese Exclusion Act applied to all persons in the class excluded. The present Act discriminates, not on account of the person of the alien, but on account of something not otherwise unlawful which the alien, or someone else for him, has done prior to his coming within the jurisdiction of this Government. However, we are only to consider the validity of this law, or rather the first and second sections of it, as it may *incidentally* affect the alien. The real question, or rather the only one that this Court is called upon to dispose of in the case at bar, is whether or not the Act of 1885 is valid in so far as it affects any American citizen who shall enter into such a contract with an alien prior to his migration. The learned Judge in that case says: "While the Act does not de-
"clare, in express terms, that the immigration of foreigners
"under contracts to labor here shall be deemed unlawful, the
"whole tenor of the statute indicates this to be its purpose,
"though the penalty is visited only upon the party who aids and
"assists the immigrant. But conceding that the contract only
"is illegal and void, and the immigration lawful, we know of

"no principle which forbids Congress from declaring that a cer-
"tain method of procuring immigration of foreigners shall be
"unlawful, and imposing a punishment upon those who adopt
"that method." The difficulty with the learned Judge's reasoning and conclusion is, that if he admits the immigration to be lawful, he admits the lawfulness of the only thing which Congress has the power under the Constitution to regulate. There is no principle of Constitutional law under which it can be reasonably argued that the Federal Government can interfere with the lawful private acts of an American citizen done abroad, or declare unlawful such an act done with an alien abroad which would not be unlawful if done with the alien after his migration to this country. The people of the United States are citizens, not subjects. The Congress of the United States, under that clause of the Constitution giving it exclusive power to regulate commerce with the foreign nations, undoubtedly has very extensive powers in that respect, extending, no doubt, to the exclusion of all foreigners, should it choose to go that far by appropriate legislation; but it has no power, even incidentally, to declare unlawful the otherwise lawful private act of an American citizen done within the States or in a foreign country beyond its jurisdiction, merely because the effect of such act of the citizen is to indirectly cause the migration to this country of a foreigner, *and without which act of the citizen such migration is not unlawful,* and not attempted to be prohibited by the law in question. Indeed, it is practically admitted by the learned Judge, in United States *vs.* Craig, that it is only the contract, and not the immigration, that is made unlawful by this statute. It is the latter alone which marks the extreme boundary line of Federal jurisdiction.

It is respectfully submitted that for the reasons advanced the judgment of the Court below is erroneous, and should be reversed.

H. T. FENTON,
Counsel for Plaintiffs in Error.

Act of February 26, 1885, Chap. 164: 23 Stat. at Large, p. 332.

Chap. 142.—An Act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act, it shall be unlawful for any person, company, partnership or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

SECT. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service, or having reference to the performance of labor or service by any person in the United States, its Territories, or the District of Columbia, previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

SECT. 3. That for every violation of any of the provisions of Section 1 of this Act, the person, partnership, company or corporation violating the same by knowingly assisting, encourag-

ing or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories or the District of Columbia, to perform labor or service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor, including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the Circuit Courts of the United States; and separate suits may be brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

SEC. 4. That the master of any vessel who shall knowingly bring within the United States on any such vessel, and land, or permit to be landed, from any foreign port or place, any alien laborer, mechanic or artisan, who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such alien laborer, mechanic, or artisan, so brought as aforesaid, and may also be imprisoned for a term not exceeding six months.

SEC. 5. That nothing in this Act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants or domestics for such foreigner temporarily residing in the United States as aforesaid; nor shall this Act be so construed as to prevent any person or persons, partnership or

corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States, in, or upon, any new industry not at present established in the United States: *Provided*, That skilled labor for that purpose cannot be otherwise obtained; nor shall the provisions of this Act apply to professional actors, artists, lecturers or singers, nor to persons employed strictly as personal or domestic servants: *Provided*, That nothing in this Act shall be construed as prohibiting any individual from assisting any member of his family, or any relative or personal friend, to migrate from any foreign country to the United States, for the purpose of settlement here.

SECT. 6. That all laws or parts of laws conflicting herewith be, and the same are, hereby repealed.

Approved February 26, 1885.

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In the Supreme Court of the United States.

OCTOBER TERM, 1893.

JOSEPH LEES AND JOHN S. LEES,
Plaintiffs in error,
vs.
THE UNITED STATES.
No. 98.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

JOSEPH LEES AND JOHN S. LEES,
Plaintiffs in error,
vs.
THE UNITED STATES.
} No. 98.

This was an action brought in the district court of the United States for the eastern district of Pennsylvania by the United States, against James Lees & Sons, to recover from the surviving partners the sum of $1,000, with interests and costs, being the forfeit and penalty for the violation by them of the act of Congress entitled "An act to prohibit the importation and migration of foreigners and aliens under contract and agreement to perform labor in the United States." (23 Stat., 332; 24 Stat., 414.)

Long prior to and on the 7th of May, 1886, Joseph Lees, James Lees, and John S. Lees, trading as James Lees & Sons, were engaged in the manufacture of woolen cloths at Bridgeport, Montgomery County, Pa. On the 7th of May, 1886, the said James Lees & Sons, through

Johnson and Umpleby, their duly authorized agents, entered into a contract, in the county of Yorkshire, in England, with one Frederick William Graham, whereby it was agreed by and between the parties that the said Graham should proceed from Yorkshire, in England, to Bridgeport, in Pennsylvania, and there serve the said James Lees & Sons in their trade or business as woolen cloth manufacturers, as dyer, for the term of twelve months from the date of his sailing from Liverpool to New York, at a salary of £4 per week. That said James Lees & Sons should provide said Graham with a second cabin passage from Liverpool to New York.

The terms of this contract were fully performed by the parties thereto before the institution of this suit.

So much of the acts of Congress, above referred to, as is applicable here is as follows:

> That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way assist or encourage in the importation or migration of any alien or aliens, or foreigner or foreigners, in the United States, etc., under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, etc.
>
> SEC. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership, or corporation, and any foreigner or alien, to perform labor or service, or having reference to the performance of labor or service, by any person in the

United States, etc., previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

SEC. 3. That for every violation of any of the provisions of section 1 of this act, the person, partnership, company, or corporation, violating the same by knowingly assisting, encouraging, or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, etc., to perform labor or service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offence the sum of $1,000, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor, including any such alien or foreigner, who may be a party to any such contract or agreement, as debts of like amount are now recovered in the circuit courts of the United States. The proceeds to be paid into the Treasury of the United States and separate suits may be brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

SEC. 5. That nothing in this act shall be so construed * * * as to prevent any person or persons, partnership or corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the Uni ed States: *Provided*, That skilled labor for that purpose can not be otherwise obtained, etc.

ERRORS ASSIGNED.

First. Demurrer to declaration (p. 10).

(*a*) The circuit and not the district court has jurisdiction.

(*b*) Not alleged that defendants were residents of the eastern district of Pennsylvania.

(*c*) Not averred that the alien had emigrated to the United States or that he had performed labor or service in the United States for defendants in pursuance of alleged contract.

(*d*) It is not averred that the alien and the purpose of his employment was not within the proviso of the act of Congress of February 26, 1885, exempting from its operation skilled workmen in any new industry not then established in the United States and for which skilled labor could not otherwise be had.

The amended statement of plaintiff's claim on page 13, on which the issue was joined and the case proceeded to judgment, removes several of the grounds of objection assigned in the demurrer.

JURISDICTION.

As to the objection made to the jurisdiction of the district court over this subject-matter, it may be sufficient to note that "the district court has jurisdiction over all suits for penalties and forfeitures incurred under any law of the United States." (Rev. Stat., § 563.) And "suits for penalties and forfeitures" mean civil actions for the recovery of the penalty and forfeitures. (*United States* v. *Mann*, 1 Gallison, 3, 177.) And this exclusive juris-

diction of the district courts of the United States is not taken away by the first section of the judiciary act of March 3, 1875. (*United States* v. *Mooney*, 116 U. S., 104.) The expression in the third section of the act of February 26, 1885 (23 Stat., 333), "which may be sued for and recovered by the United States as debts of like amount are now recovered in the circuit courts of the United States" refers to the form and manner of proceeding, and not to the forum. It plainly can not be construed to effect by implication the repeal of the act conferring jurisdiction on the district court.

In the case of *The United States* v. *The Mexican National Railway*, decided by the circuit court, western district Texas, December, 1889 (40 Fed. Rep., 769), the jurisdiction of the circuit court in a similar action was sustained on the ground that "it was the intention of Congress, as plainly manifested by the the third section of the act of February 26, 1885, to invest the circuit courts with jurisdiction of suits to recover the penalties and forfeitures denounced against offenders for a violation of the provisions of the act." The only apparent ground for this view seems to be found in the language of the section quoted above, *i e.*, "which may be sued for and recovered by the United States, etc., * * * as debts of like amount are now recovered in the circuit courts of the United States."

If the words "as debts of like amount are now recovered" were omitted, or if after the word "recovered" there was a punctuation mark to indicate that the words "as debts of like amount are now recovered" were used parenthetically; or, if in the context of the third section,

or the entire chapter, anything could be found referring to the forum in which suits were brought, there would be stronger ground for the construction claimed than now appears to exist. If the rule is to be followed of giving effect to all the words of a statute not inconsistent with its obvious general intent, then the only effect that can be given to the words quoted is to regard them as indicating only the form and manner of proceeding in such cases, to wit, "as debts of like manner are now recovered in the circuit courts of the United States."

The effect of the construction placed upon the third section by the circuit court in Texas, is to repeal by implication section 563, Revised Statutes, which gives to the district courts of the United States jurisdiction "of all suits for penalties and forfeitures incurred under any law of the United States."

In *United States* v. *Mooney* (116 U. S., 104), the action at law was brought in the circuit court of the district of Massachusetts to recover of the defendant $20,000, value of certain merchandise imported by him, which it was alleged he had forfeited to the United States because he had knowingly and with intent to defraud the revenue made an entry of the same by means of false and fraudulent invoices. A motion was made to dismiss the action for want of jurisdiction on the ground that the district courts had exclusive jurisdiction "of all suits for penalties and forfeitures incurred under the laws of the United States." This motion was resisted on the ground that under the first section of the act of March 3, 1875, district courts had jurisdiction "of all suits of a civil nature at common law or in equity where the matter in dispute ex-

ceeds, exclusive of costs, the sum or value of $500 and arising under the constitutional laws of the United States. The motion was granted and the action dismissed. On appeal this court affirmed the judgment.

There was much stronger ground presented in that case for claiming a repeal by implication than exists here. And, indeed, in the Texas case above cited, a strong argument is presented in the opinion of the court against such a construction of statutes as will operate a repeal by implication.

It is further objected "that the act does not extend to all persons in the same class equal protection of the laws," and "that it discriminates between persons in the same class." This seems to refer to the fourteenth amendment of the Constitution, which, however, does not define the powers of Congress, but prescribes a further limitation to the powers of the State, its language being: "Nor shall any State deny to any person within its jurisdiction the equal protection of the laws." It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of equality of rights was originally assumed by the States and it remains there. The only obligation resting upon the United States is to see that the States do not deny the right; this the amendment guarantees and no more. The power of the National Government is limited to this guaranty. (*United States* v. *Cruikshank*, 92 U. S., 542; *United States* v. *Harris*, 106 U. S., 635.)

By Revised Statutes, section 732, "all pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrued or in the district where the offender is found.

Jurisdiction results from the subject-matter and not from the residence of the parties; hence any allegation in the declaration as to defendant's residence was unnecessary.

It is further objected, as a ground of demurrer to the declaration and also by way of "conclusions of law" asked for by the defendant and refused by the court, that the act of Congress of February 26, 1885, is

UNCONSTITUTIONAL

on the grounds set forth in sections 9, 10, 11, 12, 13, 14, 15, and 16, on pages 74 and 75.

In *United States* v. *Craig* (28 Fed. Rep., 795), the constitutionality of this act of Congress was called in question and was fully considered by Judge (now Mr. Justice) Brown, of this court, who in an able opinion discusses the question in every aspect in which it is presented in this case; and he concludes that the power to regulate commerce "extends to every species of intercourse with foreign nations," and that under it Congress "may inhibit the immigration of any class of persons which may seem to it an undesirable addition to the population of the country." The criticism that it forbids the encouragement and solicitation of an act which continues to be perfectly lawful in itself, viz, the immigration of alien laborers, is unfounded. * * * It does not purport

to inhibit or discourage the immigration of foreign laborers in general, but only the importation of such laborers under contracts made previous to their migration or importation."

> It was undoubtedly competent for Congress to have gone still further and provided for the return of such laborers to their own country, as was done in the other acts inhibiting the entry of lunatics, paupers, and Chinese. * * * We know of no principle which forbids Congress from declaring that a certain method of procuring the immigration of foreigners shall be unlawful and imposing a punishment upon those who adopt that method. While the case is one of considerable public interest, the constitutionality of the act is too clear to require an elaborate consideration.

In the *Church of the Holy Trinity* v. *United States* (143 U. S., 457), while the constitutionality of the act of Congress was not presented directly to the court for consideration, yet, was it clearly implied in the decision of the court, in determining the classes of laborer and service to which the act applied.

The powers of Congress to exclude aliens from the United States is an incident of sovereignty, which can not be surrendered even by the treaty-making power.

The Chinese Exclusion Case (130 U. S., 581). See also an able and learned discussion of the powers of Congress, the Chinese cases (149 U. S., 699).

EXAMINATION OF JOHN S. LEES.

It is also assigned as error, that the court erred on the trial in overruling defendant's objection to the compulsory examination of John Lees, on the part of the Government,

against himself and codefendant. If error in this regard was committed by the trial court, it could be brought to the attention of the reviewing court only by a bill of exceptions, setting forth plainly the matter complained of as error, and thereby introducing the same into the record. In *Hanna* v. *Maas* (122 U. S., 24) this court said:

> The object of a bill of exceptions is to put on record rulings and instructions in matter of law which could not otherwise be a subject of revision in a court of error, the excepting party, in order to entitle himself to such revision, must not only allege exceptions at the trial or hearing, but he must afterwards draw up and hand to the presiding judge those exceptions in writing, stating distinctly and specifically the rulings or instructions of which he complains. * * * Minutes of the judge or clerk, or notes of a stenographer, can not take the place of a bill of exceptions, but are only memoranda, by the aid of which one may afterwards be drawn up. (*Pomeroy* v. *The Bank of Indiana*, 1 Wall., 592; *Thomson* v. *Riggs*, 5 Wall., 663; *Young* v. *Martin*, 8 Wall., 354; *Insurance Company* v. *Lanier*, 95 U. S., 171). The exceptions must be drawn up and settled in the proper form in the court below and can not be amended or redrafted in this court. (*Stimpson* v. *Westchester Railroad Company*, 3 How., 553.)

In this case, on page 17, a bill of exceptions appears to have been begun, and on page 73 to have been concluded. The intermediate space is occupied with the testimony of the witnesses. On page 26 there appears the following:

> John S. Lees, sworn:
> Mr. FENTON. John S. Lees, the witness called, is one of the defendants. This is a proceeding in the

nature of a criminal proceeding. I object to his being examined on behalf of the plaintiff, because he is protected by statute.

(Objection overruled. Exception for defendant.)

It nowhere appears, by any certificate of the judge, by whom John S. Lees was called to testify, or on whose behalf. Nothing by which the fact is certified to this court that any objection was made and overruled, or any exception taken for defendants, nor, indeed, does it appear when, or by whom the remarks above quoted were written, upon the record from which this transcript was made. These are all matters extraneous to the record and could only be introduced into the record by a proper bill of exceptions, and no such bill appears in this record. The only bill of exceptions in the record is the one above indicated, and that it does not refer to these remaaks on page 26 is manifest from the conclusion of that bill as appears on page 73, which follows immediately upon the charge given by the court to the jury, and is stated as follows:

> And thereupon the counsel for the said defendants did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion, so excepted to, do not appear upon the record, the said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court and requested the seal of the judge, aforesaid, should be put to the same, etc.

Throughout this entire testimony, from page 17 to page 64, occur numerous parenthetical statements of "exception for defendants" and "objected to," etc., and very frequent expressions of opinion by the court on the admissibility and relevancy of the testimony. With as much

propriety could it be insisted that each of these without further specification could be considered now by the reviewing court as embraced within this single bill of exceptions. It is plainly evident that the bill of exceptions was designed, as it states, to introduce into this record only the charge and opinion of the court, and did not relate to any of the innumerable other matters, as to which it appears that the right to except was reserved at the time of their occurrence, and memoranda entries made at the time for future bills of exception, should they thereafter be deemed advisable. But the purpose to introduce these matters by such bills of exception seems to have been abandoned; at any rate no such bills appear in this record, and these matters can not, therefore, be considered by the court.

But should the court be of opinion that the objection to the examination of John S. Lees is sufficiently presented by the bill of exceptions, as indicated above, we beg to submit that the proper course for Mr. Lees to have pursued was that which has been pursued by every other man who rested his objection on the ground that his testimony would tend to criminate himself; he should have stood mute and refused to speak at all. As it is, he presents himself in the attitude of taking two chances; of saying all he could for himself, as far as the facts would allow him to do so, and failing thereby to secure an acquittal to object to the verdict on the ground that he had testified at all. Nearly all the cases cited by counsel in his brief on this point present—not the question of the party being required to testify—but the right of the plaintiff to require the production of the books, papers, plates, photographs, etc., of the defendant by subpœna *duces tecum*.

In *Johnson* v. *Donaldson* (3 Fed. Rep., 22) the defendant had appeared and testified, and the plaintiff asked for a subpœna to compel the production of the photographic plates and books. So in *Chapman* v. *Ferry*. (12 Fed. Rep., 693.) It was a bill in equity filed to compel the production of plates, books, etc. In *Boyd* v. *United States*. (116 U. S., 616.) This was a criminal information filed by the district attorney to enforce a forfeiture of property in addition to a fine imposed for violation of the customs revenue law. This court in its opinion appears to have considered it as a proceeding *in rem* and properly declared it to be a criminal case.

Section 860 Revised Statutes relates only to evidence obtained from a party in one proceeding being used against him in some other and subsequent proceeding in the courts.

And now as to the charge and opinion of the court which is the subject of this bill of exceptions: No error is specifically assigned, but the whole charge is dumped out en masse, and this court is called upon to scrutinize the whole opinion and charge and pick out from it such error as it may discover. In *Hanna* v. *Mass*, *supra*, p. 26, the court say:

> The bill of exceptions instead of stating distinctly, as required by law and by the fourth rule of this court, those matters of law in the charge which are excepted to, and those only, does not contain any part of the charge, or any exception to it, and undertakes to supply the want by referring to exhibits annexed, containing all the evidence introduced at the trial, the whole charge to the jury and notes of a desultory conversation which followed between the judge and

> the counsel on both sides, leaving it to this court to pick out from those notes if possible a sufficient statement of some ruling in matter of law; but to assume to do that would be to take upon ourselves the duty of drawing up a proper bill of exceptions, a duty which belonged to the excepting party and should have been performed before suing out the writ of error. This we are not authorized to do. Our duty and authority are limited to determining validity of exceptions duly framed and presented.

And so, neither "the points of law," the charge of the court, nor the opinions of the court, are before this court for review.

OBJECTION TO FORM OF ACTION AND TO ADMISSION IN EVIDENCE OF THE CONTRACT AND MR. LEE'S LETTER.

The action was brought, as appears from the writ on page 4, against "Joseph Lees and John Lees, surviving partners of James Lees, deceased, now, or late, trading as James Lees & Sons."

It seems to be considered by counsel for plaintiffs in error, if I correctly understand the language of his brief, that the person liable here, if any, was "the partnership of James Lees & Sons in its partnership capacity," and not the surviving members of that firm. This position seems to confound a partnership entity with a corporation. An action at common law against a partnership firm is brought not against the partnership in its firm name at all, but against the individual members of the firm; for example, not against "John Smith & Co.," but against "James Smith, Joseph Smith, and John Smith," trading under the firm name and style of "John Smith & Co."

The liability of the partners in the action is not limited to their interest in the firm, but each is liable for the whole amount, even though that amount greatly exceeds his interest in the partnership. And so, where one partner has died, the survivors are sued as individuals, described as survivors of themselves and the deceased partner.

Now if, as is claimed in the brief (p. 9), this penal liability, for which these defendants are sued here, is to recover the amount of a penalty for violation of law committed by them all, then were they all wrongdoers, and for that reason were severally liable, without even the right of contribution among themselves.

As to the admissibility of the contract in evidence, its relevancy to the issue was made apparent by the testimony of Graham (p. 19) and Umpleby (p. 23), and it was for that reason competent evidence as tending to prove the issue in the cause, and this wholly apart from the testimony of John Lees.

As to the admissibility of the letter from John S. Lees to Umpleby, the declaration, or "statement of plaintiff's demand," (p. 5) alleged the partnership; and this allegation was not denied or put in issue, but was indeed admitted in the statement of defense on page 7. The view presented in the brief on this point seems to be that as this was an illegal contract, or a contract to do an illegal thing, that it was beyond the power of one partner to bind the other members of the firm by his unlawful act, and that it was necessary for the Government to prove previous authority to John S. Lees from his partners to do the illegal act. That "the implied authority of a partner to

make contracts for the firm in the line of its business, has no application to the making of a contract contrary to law and prohibited by penal statute." This may be all very true. But it will hardly be contended that if one partner, acting for and in the name of his firm, but without the express previous authority of his partners does an illegal act which his partners not only confirm and approve, but knowingly receive the benefit and advantage of, that they will be heard in denial of their liability to say that because they had not previously authorized it, therefore they should not be held accountable for it.

Now, here, it is beyond dispute that John S. Lees did make this contract in England for and on behalf of his firm; that the foreign laborer did come over to this country and take service under the firm at their place of business; that his passage was prepaid; and that the partners of John S. Lees, whether they had previously authorized his act or not, did knowingly ratify it and accepted the service of the laborer obtained under it.

The letter on pages 25 and 26 was, therefore, clearly admissible as tending to prove the transaction, or rather indeed to corroborate and strengthen the proof already in the case.

THE MERITS OF THE CASE.

In *United States* v. *Craig* (*supra*, p. 799), the court said:

> To give a right of action under this section, three things are essential.
>
> (1) The immigrant must first, previous to his becoming a resident of the United States, have entered into a contract to perform labor or service here.

(2) He must have actually migrated or entered into the United States in pursuance of such contract.

(3) The defendant must have prepaid his transportation, or otherwise assisted, encouraged, or solicited his migration, knowing that he had entered into this illegal contract.

Here the contract is in writing, page 6, and was made on the 7th of May, 1886.

Graham himself proves, and his testimony is in nowise assailed or contradicted, that he sailed from England on the 29th of May, 1886 (p. 19), having previously signed the contract. This is corroborated by all the other witnesses speaking to that point.

Mr. Umpleby proves (p. 20, *et seq.*) that he was employed by the defendants in England to procure the labor for them; that he engaged Graham; that Mr. Fred Johnson was associated with him in the business; that they introduced Graham to one of the defendants; and that Graham was engaged by one of the defendants as a dyer; and that Graham came over to the United States under this engagement, and went to work at the mill of the defendants in Pennsylvania.

On pages 25 and 26 is a letter from John S. Lees to Mr. Umpleby, dated "Dales street, Liverpool, April 13, 1886," twenty-four days before the date of the written contract with Graham, in which Mr. Lees discloses his knowledge of the law which he is now charged with having violated, and admonishes his agent to be silent as to the work he was engaged in.

Mr. Graham testifies that his passage tickets from Liverpool to New York were handed to him in Liverpool by

Mr. Bowes. Bowes is shown (p. 23) to have been the wool broker of the defendants.

All three of the above-stated requirements are fully proven by the testimony of other witnesses than John S. Lees.

Mr. Lees's testimony exhibits a frank and full disclosure of all the facts and leaves the matter wholly beyond dispute.

Another question of great practical value and public interest involved in this case is as to what constitutes a "new industry" under section 5 of the act.

It was held by the court below that:

> It must be a new enterprise; it must not simply be the introduction of greater skill and greater care into an old one.

And this, manifestly, is a correct statement of the intent and object of the act. Its beneficent operation would be altogether defeated were it held to extend to every addition, alteration, or improvement which might be introduced in existing methods.

It would become impracticable, then, to draw a line which would exclude any sort or kind of labor.

And it is abundantly shown by the testimony here, on pages 49, 53, 56, etc., that the manufacture of cheviots had long existed in this country; and the purpose and effort of the defendants here was the introduction of such skilled labor as would enable them to produce, by the application of greater skill and greater care, a higher grade of cheviots.

Counsel for plaintiff in error in his brief (p. 13) questions the construction placed by the lower court on the

words "new industry," and suggests, as a definition of his own, the following:

> It is answered fully if the product made by the imported laborers was so far different in its characteristics, quality, and value that, as compared with any product then made in this country, it could not be properly substituted for it in a commercial sense. The statute does not mean goods of a new genus, but is answered by a new species of goods of the same genus.

He illustrates this definition by the statement that, although a woolen fabric called *cheviots* was well known and made in this country prior to 1886, that in point of fact real cheviots were not made here, but merely a character of goods in imitation of the genuine cheviots and differing from them in distinguishing characteristics to such an extent as to be easily distinguishable therefrom, and in point of fact not the same kind of goods.

Suppose instead of cheviots we try some other subject. Champagne wines are made in several parts of this country; they are known commercially by that name. If laborers or experts were imported into this country by wine producers from the champagne regions of France and introduced in their establishments here, would they be heard to say, when charged with violation of the law, that what is called champagne in this country was not "real" champagne, but merely a character of goods in imitation of the genuine champagne. And so of Russia leather and many other articles that might be instanced; as to all of which it may be said, as is true of the cheviots, that to be the "real" article they must be produced

at the place and under all the conditions of the genuine original article. "Cheviots" take their name from the cheviot hills of Scotland, either because this woolen fabric was first produced in that region or because the wool from which they are made was grown there. No cheviots, then, can be real cheviots in the sense indicated in the brief of counsel unless made at that place or with that wool.

The testimony in this case (pp. 56–49, etc.) shows conclusively that cheviot cloths have been manufactured in this country for more than twenty years.

That the plaintiffs in error here were unable, by their experiment of importing foreign labor, to produce what is called the "real" cheviots is apparent from the fact admitted by them in their testimony that the product of these imported laborers was unsatisfactory and they were discharged.

It may be safely concluded, then, that the object of the law prohibiting the importation of foreigners "to perform labor or service of any kind in the United States" was directed against physical or manual labor of all kinds and not intellectual labor. It does not extend to ministers of the gospel, professors in colleges, or instructors in art or science.

And by "service" is plainly meant what the name in its etymological sense imports—the work of a servant, a hireling, a wage earner.

Both by labor and service, then, is embraced just the class to which the men imported by the plaintiffs in error properly belong.

The idea of counsel, as expressed on page 15 of his brief, appears to be that what he terms "commercial differences" and not "generically intrinsic differences" must determine whether an industry is "new" or merely improved. That this is altogether impracticable is evident from the fact that every European product is "commercially different" from an American product. The logic of the counsel's argument leads to the result that every product of European industry must be treated as the product of a new industry, and European laborers in such industry can be imported free into this country under contract, because Russia leather, French champagne, and Scotch cheviots cease to be such when manufactured in this country, and whatever foreign appellation may be given them they remain as only American products; and laborers in these industries in Europe may continue to be brought here under contract as laborers upon new industries until Europe and America become united as one country.

HOLMES CONRAD,
Assistant Attorney-General.

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